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PREFACE.

FOR this Edition the text has been thoroughly revised, and some of the points dealt with have been elaborated; but the alphabetical arrangement has not been disturbed.

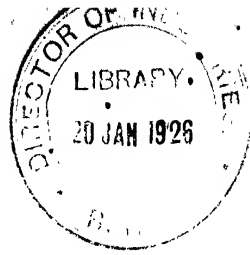
The book sets out in concise form the requirements of The Companies Acts, 1908 to 1917, together with such provisions of The Stamp Act, 1891, as particularly affect Companies. It also shows the current practice of the Registrar of Companies and the Commissioners of Inland Revenue, changes in the practice of the respective Departments being recorded as they occur.

Wherever statements are made for which there is judicial authority, the relevant Cases are cited and the Sections of the Companies Acts and other Statutes are specified wherever reference is made to Statutory provisions.

H. W. J.

116 TO 118 CHANCERY LANE, LONDON, W.C. 2.

April, 1925.



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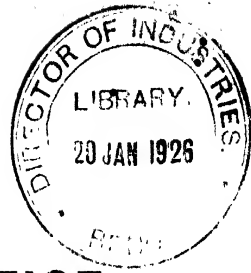
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COMPANY LAW AND PRACTICE.

ACTS AFFECTING COMPANIES.

Companies are governed by The Companies (Consolidation) Act, 1908, The Companies Act, 1913, The Companies (Foreign Interests) Act, 1917, and The Companies (Particulars as to Directors) Act, 1917, the four Acts being together cited as "The Companies Acts, 1908 to 1917."

The Act of 1908 repealed the whole of the seventeen Statutes known as "The Companies Acts, 1862 to 1908," and The Preferential Payments in Bankruptcy Amendment Act, 1897, and it also abrogated portions of ten other Acts affecting Companies. Wherever the expression "the Act" or "the Companies Act" is used in this book reference to the Act of 1908 is intended, and the sections cited are those of that Act unless otherwise stated.

Although the phraseology of the old Statutes was considerably modified by the Act of 1908, only a few trivial changes were made in the Law, the Act having been framed with the object of consolidating, with as little alteration as possible, the legislation relating to Companies contained in the previous Companies Acts and certain other Statutes.

The Act of 1913 is a short amending Statute which removed certain defects in the provisions of the Act of 1908 with regard to the obligations of Private Companies.

The Companies (Foreign Interests) Act, 1917, was passed to render unalterable any provisions in a Company's Articles or Regulations designed to restrict or limit the
C.L.

interest or control therein which might be acquired or held by an alien, and its provisions are referred to on pages 18 and 19.

The Companies (Particulars as to Directors) Act, 1917, applies to Companies the provisions of the Registration of Business Names Act of 1916, the purpose of which Act was to secure the disclosure of the identity of persons trading under other than their own names and of alien interests in firms. The Act requires disclosure of the real controlling element in a Company and a larger measure of publicity in regard to the persons or corporations constituting its Directorate than was formerly required. (*See under ANNUAL RETURN and REGISTER OF DIRECTORS.*)

A few other amendments of less importance have been made by other Acts only incidentally affecting Companies, and these are noted in the appropriate places in the text of the Companies Acts set out at the end of this book.

ADVANTAGES OF INCORPORATION.

The advantages realised on the conversion of a business into a Company Limited by Shares may be summarised as follows:—

The liability of the Members is limited to the amount (if any) unpaid on the Shares held by them.

The respective interests of the persons engaged in the business can be easily provided for.

The conversion enables the proprietor of the business (or any other Shareholder) to determine more precisely and intelligibly the respective interests of beneficiaries under his Will, and thus to facilitate the distribution of his estate by his executors.

The appointment, retirement, or removal of Directors is effected in a simple manner.

Facilities are afforded for obtaining additional Capital and borrowing money, and for amalgamating or establishing reciprocal interests with other bodies.

Employees may, with adequate safeguards, be afforded an opportunity of acquiring interests in the business corresponding to their respective positions and responsibilities, or Shares may be allotted for services rendered or in pursuance of a profit-sharing policy. (Employees and ex-employees who on leaving the Company's employment have retained Shares acquired by them during that employment are not counted in the maximum number of Members allowed a Private Company.)

The number of persons who may be associated in the enterprise is not limited, except in the case of a Private Company (*q.v.*), and a far greater number can be admitted as Shareholders, even in a Private Company, if desired, than could be included as Partners in a workable Partnership.

Neither the continuance of the business nor the position of the remaining Members is affected by the death of one of their number, as no obligation rests upon the survivors to realise the interest of the deceased in the Company. Similarly the retirement of a Member by the disposal of his Shares does not concern the other Members.

The liability of Executors acting for deceased Shareholders of a Company is clearly defined.

The disposal of the whole or part of the business to any other company, firm, or person is facilitated.

In all these respects Limited Companies and also the Members thereof individually are in a more advantageous position than general Partnerships (unregistered) or Partnerships registered under The Limited Partnerships Act, 1907, and the Members thereof.

ALLOTMENT OF SHARES.

In the case of the first offer to the public of Shares of a Public Company, no allotment may be made unless the amount of the Minimum Subscription (*see* p. 145) has been subscribed. A similar condition is imposed in the case of the first allotment of Shares payable in cash of a Public Company which does not issue any invitation to the public to subscribe for Shares (Section 85). An allotment made in contravention of this provision

is voidable if notice of avoidance is given to the Company by the allottee within one month after the holding of the Statutory Meeting (even if the Company is in course of winding up), and Directors who knowingly make or permit or authorise an allotment for cash before the Minimum Subscription has been obtained are liable for any loss, damages, or costs sustained by the Company or the allottee owing to the contravention. Proceedings to recover such sums cannot, however, be commenced after two years from the date of allotment (Section 86).

Within one month after the allotment of any Shares by a Company Limited by Shares a Return of Allotments must be filed pursuant to Section 88. If several allotments are made in the course of the month, they may all be comprised in one document. No Return is required in the case of a Company Limited by Guarantee or in the case of an Unlimited Company.

The Return (prepared on the prescribed Form and impressed with a 5s. stamp) must state the number and nominal amount of the Shares, the names &c. of the allottees, and the amount paid or due and payable on each Share. If any Shares are issued as fully or partly paid up otherwise than in cash, the document must also indicate the extent to which they are to be treated as paid up and the consideration for which they were allotted. A Contract constituting the title of the allottee to allotment must also be filed, together with any Contract of Sale or for services or other consideration in respect of which the allotment was made. The Contract of Sale usually constitutes the allottee's title to allotment, thus rendering a further Contract unnecessary. The Contract or Contracts must be executed by all parties thereto and be duly stamped.

Where, in the case of a Sale, the Vendor does not take the whole of the Shares to which the Contract relates, and his nominees are not parties to the document, there should also be filed either a Supplemental Contract constituting the title of the nominees (bearing a 10s.

stamp, if it is under Seal), or a Nomination in their favour, specifying the number of Shares to be allotted to each person. The Nomination must be stamped before execution as a Letter of Renunciation, the duty being 6d. where the aggregate amount of the Shares (including any fractional part of a Share) to which the document relates is £5 or more, and 1d. if less than £5. The stamp may be either impressed or adhesive; if adhesive, it must be cancelled by the person who executes the Nomination (Stamp Act, 1891, Schedule, and Section 79; Finance Act, 1899, Section 9; Revenue Act, 1909, Section 9).

If the Contract of Sale is not in writing, "the prescribed particulars of the Contract" must be filed within one month after the allotment. Such particulars (on Form 52) must be stamped with the same duty as would have been payable if the Contract had been reduced to writing. It would seem that a Contract constituting the allottee's title to allotment should be filed with the form of "prescribed particulars"; but in practice this document is not required by the Registrar.

Where the Shares are allotted in consideration of services rendered or to be rendered the Contract will require a stamp of 6d. or 10s., according to whether it is under hand or seal. In the absence of a Contract in writing the duty of 6d. will be payable on "the prescribed particulars."

A Contract of Sale is chargeable under Section 59 (1) of The Stamp Act, 1891, with *ad valorem* duty as a Conveyance in respect of the sale of any equitable estate or interest in any property whatsoever, or any estate or interest in any property "except lands, tenements, hereditaments, or heritages, or property locally situate out of the United Kingdom, or goods, wares, or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel." In other words, duty is payable on the proportion of the consideration attributable to freehold, leasehold,

or copyhold property subject to mortgage, fixed plant and machinery and other fixtures on such property, fixed plant and machinery on unencumbered leaseholds (including tenants' trade, and other fixtures), book debts, cash on deposit, goodwill, and benefit of contracts, and any other assets not coming within the above exemption. The expression "goods, wares, or merchandise" is deemed to include electrical energy (Electric Lighting Act, 1909, Section 19). For the purpose of stamp duty the liabilities assumed by the Company must (in order to ascertain the total consideration) be added to the purchase price payable in cash or in Shares or Debentures, both of which must be reckoned at their par value. A stamp of 10s. (or 6d. if under hand only) must also be impressed on the Contract. The following table is given in order to indicate more clearly the operation of the section referred to:—

CONSIDERATION TO BE APPORTIONED.				£
Amount payable in Shares ... ..	...	...	...	10,000
Amount payable in Debentures ... ..	...	...	...	3,000
Amount payable in Cash ... ..	...	...	...	1,500
Liabilities (excluding Mortgages) to be satisfied by the Company ... ..	...	...	...	750
Mortgages on Properties acquired by Company ...	...	...	...	1,500
Interest on Mortgages accruing to date of Sale ...	...	...	...	30
Total				<u>£16,780</u>

ASSETS SOLD TO COMPANY.	Apportionment of Consideration	ITEMS CHARGEABLE	
		On Contract	On Conveyance or Assignment
Freehold Property and Fixed Plant and Machinery and other Fixtures thereon (unencumbered)	£	£	£
Freehold Property and Fixed Plant and Machinery and other Fixtures thereon (subject to Mortgage of £1000 and £20 Interest accruing to date of Sale)	3,500	—	3,500
Leasehold Property (unencumbered) ...	2,700	2,700	—
Carried forward	600	—	600
	6,800	2,700	4,100

ASSETS SOLD TO COMPANY.	Apportionment of Consideration	ITEMS CHARGEABLE	
		On Contract	On Conveyance or Assignment
Brought forward	£ 6,800	£ 2,700	£ 4,100
Leasehold Property (subject to Mortgage of £500 and £10 Interest accruing to date of Sale)	900	900	—
Fixed Plant and Machinery on Leasehold Property (including Tenants' Trade, and other Fixtures)	800	800	—
Loose Plant and Machinery, Stock-in-Trade, and other Chattels	3,300	—	—
Goodwill and Benefit of Contracts ..	1,500	1,500	—
Patents, Designs, Trade Marks, Copyrights, and Licences	500	500	—
Book Debts	2,300	2,300	—
Cash in hand and at Bank on Current Account, Bills of Exchange, Notes, &c.	280	—	—
Cash on Deposit	400	400	—
Totals ... £	16,780	9,100	4,100

Ad valorem duty is payable on the Contract and Conveyance and Assignment as specified, the remaining items being exempt. When assets in respect of which duty has been paid on the Contract in conformity with the Stamp Act are conveyed or assigned, the deeds will be denoted with "duty paid" stamps without further payment [Stamp Act, 1891, Section 59 (3)].

To escape liability to duty the "loose plant and machinery" must be in a state of actual severance at the date of the sale.

The rate of duty is £1 per £100 where the consideration exceeds £500. The duty is, however, at only half that rate where the amount or value of the consideration

does not exceed £500 and the Contract contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £500" [Stamp Act, 1891, Schedule; Finance (1909-10) Act, 1910, Section 73]. The statement referred to should be contained in the document itself, the most appropriate place being at the end; but where it has not been embodied the Stamp Officials will accept a Certificate signed by all the parties written on the document. The wording of the Act should be closely followed.

On the basis of the figures given on pages 6 and 7 the Contract of Sale would be liable to £91 *ad valorem* duty and a stamp of 10s. (or 6d. if under hand only), and the Conveyance and Assignment of the unencumbered properties to £35 and £6 respectively. The Conveyance of the freehold property and the Assignment of the leasehold property subject to the respective mortgages and the Assignments of the other assets in respect of which the Contract was stamped would not attract any duty, but would have to be lodged at the Stamp Office for the requisite "duty paid" denoting stamps to be impressed.

If any Shares or Marketable Securities are comprised in the sale the Instruments of Transfer will be liable to duty at the rate of £1 per £100 of the market value of such assets. No duty will be payable on the Contract in respect of the Shares or Securities.

If the Contract is rescinded or annulled owing to the Minimum Subscription not having been obtained, or for any other reason, the amount of *ad valorem* duty paid may be recovered, provided that no Conveyance or Transfer has been executed [Stamp Act, 1891, Section 59 (6)]. This provision will be seen to have an important bearing on Contracts for the sale of a business or property to trustees for a Company about to be formed.

The practice of the Registrar is to decline to accept a Contract, or the "prescribed particulars" thereof, unless the document bears the adjudication stamp or has been passed by one of the senior Officials in the Stamp Office. As the assessment of the duty is frequently not made until considerably more than a week after a document is submitted for adjudication, it should be lodged as soon as possible after execution.

If the requisite documents are not duly filed every Director, Manager, Secretary, or other Officer knowingly a party to the default will be liable to a fine not exceeding £50 for every day during which the default continues. The Court may, however, on the application of the Company or any person liable for the default, make an Order extending the time for filing, if satisfied that the omission was accidental or due to inadvertence, or that it is just and equitable to grant relief [Section 88 (3)].

If a Prospectus is issued making a second or subsequent offer of Shares to the public it must state the amount offered on each previous occasion within the two immediately preceding years, the amount actually allotted, and the amount paid on the Shares. Particulars relating to any Shares issued as fully paid for a consideration other than cash during the same period must also be given in the Prospectus [Section 81 (1)].

Letters of Allotment require stamping with the duty of 6d. if the amount of the Shares allotted (including any fractional part of a Share) is £5 or more, but if under £5 the duty is 1d. only (Stamp Act, 1891, Schedule; Finance Act, 1899, Section 9; Revenue Act, 1909, Section 9). The stamps must be impressed before execution, the penalty for default being £20 (Stamp Act, 1891, Section 79).

Until Shares are duly allotted applications may be withdrawn. Directors should therefore proceed to allotment

as soon as possible after the receipt of applications. Unless the conditions of issue otherwise provide, Certificates must be ready for delivery to applicants within two months after allotment. If not ready by that time, liability to a fine of £5 for every day during which the default continues will be incurred (Section 92).

ALTERATIONS OF CAPITAL.

A Company Limited by Shares may alter the conditions of its Memorandum of Association by—

- (1) Increasing its Share Capital by the issue of new Shares of such amount as it thinks expedient (Section 41).
- (2) Reducing its Share Capital (Section 46).
- (3) Cancelling Shares not taken or agreed to be taken by any person, and diminishing the amount of the Share Capital accordingly (Section 41).
- (4) Consolidating and dividing its Share Capital into Shares of larger amount than its existing Shares (Section 41).
- (5) Converting all or any of its paid-up Shares into Stock, and reconverting that Stock into paid-up Shares of any denomination (Section 41).
- (6) Subdividing its Shares, or any of them, into Shares of smaller amount than is fixed by the Memorandum of Association (Section 41).
- (7) Reorganising its Share Capital (Section 45).

The alteration must be authorised by the Articles, except in the case of a Reorganisation of Capital. A Reduction or Reorganisation of Capital can only be made by a Special Resolution of the Company duly confirmed by the Court. Any proposed subdivision of Shares must be effected by Special Resolution.

The subjects are dealt with under their respective headings.

ANNUAL MEETING.

Every Company is required to hold a General Meeting at least once in every calendar year, and not more than fifteen months after the holding of the last preceding General Meeting.

Failure to hold the Meeting renders the Company and every Director, Manager, Secretary, and other Officer knowingly a party to the default liable to a fine not exceeding £50. The Court may also, on the application of any Member, call or direct the calling of a General Meeting (Section 64).

The Meeting is presided over by the Chairman of the Company or of the Directors, or if there be no such Chairman by some person elected at the Meeting. He should explain the position of the Company, and give whatever information as to its affairs he may think fit. The report of the Auditors on the accounts examined by them must be read, and it is usual also for the Balance Sheet to be laid before the Meeting. Should the past year's trading have resulted in a sufficient profit to the Company one of the Directors then moves that a Dividend at a specified rate be declared. If the Meeting does not approve the proposal it may be negatived or modified, subject to any restriction imposed by the Articles. Usually the declaration of a Dividend in excess of the rate recommended by the Directors is forbidden, but the Company is not prevented from reducing the rate or determining that no Dividend shall be paid.

Auditors must be appointed to hold office until the next Annual Meeting, and their remuneration fixed. Any vacancy in the Directorate caused by retirement, resignation, or otherwise should be filled up unless it is determined to reduce the number of Directors.

The Annual Return of Capital and Members, made up to the fourteenth day after the date of the Meeting, must

be completed within seven days after such fourteenth day and forthwith registered (Section 26).

If the Directors do not call the Annual Meeting it is possible for the Shareholders to proceed under Section 66, and in due course hold an Extraordinary Meeting. This is insufficient, however, in some cases, as a Meeting of the kind can only transact the business of which due notice has been given, and is not entitled to deal with matters forming part of the business which, by the Companies Acts or the Articles of Association, is required to be transacted at the Annual Meeting. The difficulty can usually be solved by application to the Court for the enforcement of the specific provisions (if any) of the Articles, or for an Order convening the Annual Meeting in accordance with the provisions of Section 64 (under which section penalties for default can also be exacted from the Company and every Director or other Officer). If, however, the Articles contain provisions similar to those appearing in Clause 46 of Table A of 1908, any two Members may convene the Annual Meeting when the Directors have not done so within the prescribed time.

See also GENERAL MEETINGS and NOTICES.

ANNUAL RETURN.

Every Company having a Share Capital must each year prepare a List of all persons who, on the fourteenth day after the first (or only) Ordinary General Meeting in the year, are Members of the Company, and of all persons who have ceased to be Members since the date of the last Return or (in the case of the first Return) of the incorporation of the Company. The List must state the names, addresses, and occupations of the persons referred to, and the number of Shares held by each Member, and give particulars of Shares transferred. It must be accompanied by a Summary giving information as to the number of Shares issued for Cash and for a consideration other than cash, Calls made and the amounts

paid and unpaid, Shares forfeited, Share Warrants issued, Commissions paid on Shares or Debentures since the date of the last Return, amount of registrable Debts, and the names and addresses of the Directors [*see* Section 26 (1) and (2)].

The requirements of Section 26 of the Act, so far as it applies to the List of Directors that has to be included in the Annual Return, have been greatly extended by The Companies (Particulars as to Directors) Act, 1917, and there must now be included in the List the additional particulars concerning Directors as they appear in the columns (except "Changes") of the Register of Directors (*q.v.*). The word "Director" is given a much wider significance by the new Act, Section 3 of which provides that "for the purposes of this Act and of Sections 26, 75, and 274 of The Companies (Consolidation) Act, 1908, as amended by this Act, the expression 'Director' shall include any person* who occupies the position of a Director and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act."

Failure to give full and accurate particulars respecting all persons coming within this definition of Directors renders the Company and every Director, Secretary, and other officer knowingly a party to the default liable to heavy penalties (*see*, p. 166).

It is to be observed that it is only for the purposes of the new Act and of the three Sections of the Consolidation Act to which reference is made that the term "Director" has the above extended meaning, and that for all other purposes it only includes "any person occupying the position of Director, by whatever name called." (*See* Sections 274 and 285 of the Act of 1908.)

* Section 19 of The Interpretation Act, 1889, provides that the expression "person" shall, unless the contrary intention appears, "include any body of persons corporate or unincorporate."

In the case of a Public Company the Summary must also include a duly audited Statement in the form of a Balance Sheet made up to such date as may be specified in the Statement (*see* p. 231).

The List and Summary must be contained in a separate part of the Register of Members, and be completed within seven days after the date to which it is made up. A copy (known as the Annual Return) must also be made on the prescribed Form, signed by the Manager or by the Secretary of the Company, impressed with a 5s. fee stamp, and forthwith filed with the Registrar [Section 26 (4)].

The Annual Return of a Private Company must contain a Certificate that the Company has not issued any invitation to the public to subscribe for any of its Shares or Debentures since the date of the last Return (or, in the case of a first Return, since the date of incorporation of the Company). Where the Membership exceeds fifty the document must contain a further Certificate that the excess consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly so employed, were while in such employment and have continued after the determination of such employment to be Members (Companies Act, 1913).

A Limited Company carrying on the business of Banking should include a complete list of its places of business in the Annual List and Summary (*see* p. 30).

If the Annual Return is not duly registered the Company and every Director and Manager knowingly and wilfully authorising or permitting the default, will be liable to a fine not exceeding £5 a day [Section 26 (5)].

In consequence of default in registering Annual and other Returns a large number of Companies are every year struck off the Register, but in many instances the Board of Trade adopt the alternative course of instituting proceedings against the Companies and their officers.

It would seem that a Return of Capital and Members is not required after the Statutory Meeting of a Company unless such Meeting is described by the Articles or convened by the notice as an Ordinary Meeting. In practice, the Registrar never demands a Return after a Statutory Meeting.

APPLICATION FOR SHARES.

The most general way of becoming a Member of a Company is by sending in a form of application for Shares (which usually accompanies the Prospectus) duly filled up, together with the amount then payable, the Shares being afterwards allotted by the Directors. Application forms are frequently dispensed with in the case of Private Companies, but it is advisable for all applications to be in writing. Allotment should be made without delay, as the application may be withdrawn at any time previous to notice being given that the Shares have been allotted. Where more than one class of Shares is offered to the public a separate form is usually provided for each class in order to prevent errors or misunderstandings on the part of applicants.

On the issue of a Prospectus by a Company offering Shares to the public for the first time, Shares to the amount of the Minimum Subscription must be applied for before any allotment can be made, and at least five per cent. of the nominal amount of each Share must be paid. Similar conditions are imposed on Public Companies which do not invite the public to subscribe for Shares in the case of the first allotment of Shares payable in cash (Sections 81 and 85).

See also ALLOTMENT OF SHARES, MINIMUM SUBSCRIPTION, and PROSPECTUS.

ARBITRATION.

A Company may, by writing under its Common Seal, refer any difference between itself and any other company or person to arbitration, in accordance with The Railway

Companies Arbitration Act, 1859, and all the provisions of that Act apply to any such arbitration. Companies parties to the arbitration may delegate to the Arbitrator power to settle any terms, or to determine any matter capable of being lawfully settled or determined by the Companies themselves or by their Directors or other managing body (Section 119).

ARTICLES OF ASSOCIATION.

In addition to the Memorandum of Association Companies require Articles regulating their internal affairs. Companies Limited by Guarantee and Unlimited Companies must have Special Articles of Association, in which must be stated the amount of the Share Capital, or, if it is not intended to have any Shares, the number of Members with which the Company proposes to be registered. Companies Limited by Shares may, however, be registered without Articles, and in that case they are governed by the regulations contained in Table A (*see* Section 11), but it is only in very exceptional circumstances that the Table can be adopted in its entirety. A Private Company must have Articles containing certain provisions which are not included in Table A. Where strict economy has to be exercised Table A is frequently adopted with a few modifications.

Articles must be divided into paragraphs numbered consecutively, and be printed. They are also required to be signed by the Subscribers to the Memorandum of Association in the presence of a witness, and to bear a ros. stamp as if they were contained in a deed (Section 12).

The Articles (together with the Memorandum), when registered, bind the Company and the Members to the same extent as if they had been signed and sealed by the Members and contained a covenant on the part of each Member to observe all the regulations contained

therein, subject to the provisions of The Companies (Consolidation) Act, 1908 (Section 14). The Articles thus bind the Company and the Members as such, and also the Members with one another in relation to the affairs of the Company. A Member is only entitled to enforce the provisions of the Articles in his capacity of Member, and he cannot claim a benefit under a provision of an Article in a capacity other than that of Member.* All money payable by any Member to a Company under its Memorandum or Articles is a debt due from him to the Company. In England and Ireland this debt is of the nature of a specialty debt [Section 14 (2)], and accordingly the Statute of Limitations does not act as a bar to proceedings until twenty years have elapsed.

Articles occasionally authorise the Directors to make By-laws for the regulation of the Members of the Company. Seeing that Section 10 of the Act of 1908 requires "Regulations for the Company" to be prescribed by the Articles, and a Company consists of its Members, the Registrar will not accept Articles of a new Company conferring such authority on the Directors unless it is qualified by the following proviso:—

"Provided that no By-law or Regulation shall be made under this power which would amount to such an addition to or alteration of these Articles as could only legally be made by a Special Resolution passed and confirmed in accordance with Section 69 of The Companies (Consolidation) Act, 1908."

There is no objection to authority being given to Directors to make, vary, and repeal By-laws for the regulation of the Company's business or its Officers and Servants.

* *Eley v. Positive Assurance Co.*, [1876] 1 Ex. D. 20, 88 (in which the plaintiff failed in an action against the Company for breach of an Article which provided that he should be employed as Solicitor to the Company).

Subject to any conditions contained in the Memorandum of Association, Articles of a Company may be altered or added to by Special Resolution. Any alteration or addition so made is as valid as if it had been originally contained in the Articles, and is subject in like manner to alteration by Special Resolution. The nature of any proposed material alterations must be clearly explained in the Notice convening the Meeting to pass the Special Resolution, and it is not sufficient in such a case merely to specify the intention to propose a Resolution to the effect that certain words in a given Article shall be deleted and others substituted therefor. The effect of the amendment must be shown.* In the case of an Unlimited Company formed and registered under the Joint Stock Companies Acts—which were repealed by The Companies Act, 1862—the power to alter the Articles extends to altering the regulations relating to the amount of its Capital or its distribution into Shares, notwithstanding that those regulations are contained in the Memorandum of Association (Section 13).

Where, however, the Articles of a Company contain any provisions designed to restrict or limit, or having the effect of restricting or limiting, the interest or control which an alien may hold or exercise in or over the Company, whether it be by setting a limit to the possible extent of his Share holding or restricting his voting power, or by any other means, no alteration may be made in such provisions without the written consent of the Board of Trade (Companies (Foreign Interests) Act, 1917). This prohibition applies also to the regulations of any incorporated company, not being a Company registered under the Companies Acts, which are capable of alteration in like manner as the Articles of a Company so registered.

The Companies (Foreign Interests) Act further provides that where a Company, the Articles of which contain

* *Normandy v. Ind, Coope & Co.*, [1908] 1 Ch. 84.

any such provision, passes a Resolution for its voluntary winding up the Resolution shall be of no effect unless the Board of Trade gives its assent thereto in writing, and any Court which has jurisdiction to wind up a Company may in its discretion refuse to make a Winding-up Order. In the exercise of its discretion the Board of Trade or the Court, as the case may be, is to be guided by the consideration whether the winding up is a *bond fide* one with a view to discontinuing the undertaking or whether consent to the winding up is sought with a view to subsequently continuing the business free from the restrictions contained in the original Articles or Regulations of the Company it is sought to wind up.

For the purposes of these provisions the expression "alien" includes any body corporate not incorporated in some part of His Majesty's Dominions and any class of alien [Companies (Foreign Interests) Act, Section 1 (4)].

A copy of the Memorandum and Articles of Association must be supplied to any Member at his request and upon payment of a sum not exceeding 1s. (Section 18). A copy of every Special Resolution in force at the time must be embodied in or annexed to the Articles [Section 70 (2)].

ASSOCIATIONS NOT FOR PROFIT.

An Association "for promoting Commerce, Art, Science, Religion, Charity, or any other useful object" may, with the Licence of the Board of Trade, be registered with Limited Liability without the addition of the word "Limited" to its name. The Board requires the Memorandum of Association to provide that the income and property shall be applied solely to the promotion of the objects of the Association as set forth in that document; that no portion thereof shall be paid, or transferred by way of Dividend, Bonus, or otherwise to the Members, and that upon the winding up or dissolution of the Association any surplus, after satisfaction of the liabilities,

shall be transferred to some other institution having similar objects [Section 20 (1) and (2)].

The Board considers the words "any other useful object" should be read in conjunction with those immediately preceding, and they therefore place a very limited construction on them. Licences are accordingly not granted to Associations for promoting social intercourse or athletic sports.

Before entertaining any application for a Licence for an established Association the Board of Trade requires to know when the Association was formed and to be satisfied that the operations of the Association are of sufficient importance to justify the Board granting a Licence under the Section.

The Board objects to granting a Licence to an Association Not for Profit where the Memorandum of Association takes power to grant diplomas or degrees.

The draft Memorandum and Articles have to be settled by the Board's Counsel, whose fee is £7 12s. Notice of the application for a Licence must also be advertised in a local newspaper in order to afford the public the opportunity of giving notice of any ground of objection to the Association being registered. The fees payable on incorporation are the same as in the case of a Company Limited by Guarantee and Not Having a Share Capital (*q.v.*), of which "Limited" is required to be the last word in the name.

In the event of any alteration of the Articles being contemplated, the proposed modification should be submitted to the Board and its approval obtained before the passing of the requisite Special Resolution." The Registrar of Companies declines to accept a Special Resolution altering the Articles of an Association Not for Profit unless it has been passed by the Board. Where the proposed alterations are extensive the Board requires the Resolution to be settled by its Counsel and his fee of £7 12s. paid.

By Section 20 (3) of the Act it is provided that the privileges and obligations attaching to an Association Not for Profit shall be the same as in the case of a Limited Company, except that in no case is an Annual Return of Capital and Members, nor a Copy Register of Directors on Form 9 on any change occurring in the registered particulars of Directors, required to be filed, and the Association is under no obligation to publish its name. But the Registrar of Companies requires the Particulars respecting its Directors, specified by Section 2 (1) of The Companies (Particulars as to Directors) Act, 1917, to be filed within one month after the incorporation of a new Association.

The Board has power to revoke a Licence, but before doing so must give written notice to the Association, and afford it an opportunity of being heard in opposition to the proposed revocation. On a Licence being revoked the Registrar must enter in his Register the word "Limited" at the end of the name of the Association, which thereupon ceases to enjoy the exemptions and privileges granted by Section 20.

Any approval, sanction, or licence, or revocation of a licence, by the Board of Trade may be under the hand of a Secretary or an Assistant Secretary of the Board, or of any person authorised by the President of the Board (Section 284).

A Company formed for the purpose of promoting "Art, Science, Religion, Charity, or any other like object, not involving the acquisition of gain by the Company or by its individual Members," may not, without the Licence of the Board of Trade, hold more than two acres of land (Section 19).

The Registers to be kept and the Returns to be filed are the same as in the case of a Company Limited by Guarantee.

See also WINDING UP BY THE BOARD OF TRADE.

ASSURANCE COMPANIES.

Companies which carry on the business of Life Assurance, or Fire, Accident, or Employers' Liability Insurance, or Bond Investment business, are subject to The Assurance Companies Act, 1909, as well as The Companies Acts, 1908 to 1917. The former Statute consolidated, amended, and extended the law relating to Companies carrying on Life Assurance business, and repealed The Life Assurance Companies Acts, 1870 to 1872, and The Employers' Liability Insurance Companies Act, 1907, in their entirety, and also Section 7 of The Trade Union Act Amendment Act, 1876.

The Act of 1909 applies to persons and bodies of persons, whether corporate or unincorporate (not being registered Friendly Societies or Trade Unions)—described as "Assurance Companies" for the sake of convenience—whenever and wherever established, who carry on within the United Kingdom business of all or any of the following classes:—

- (a) Life assurance business: that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life;
- (b) Fire insurance business: that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire;
- (c) Accident insurance business: that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease, or sickness, or any class of personal accidents, disease, or sickness;
- (d) Employers' liability insurance business: that is to say, the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation or damages to workmen in their employment;
- (e) Bond investment business: that is to say, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at

periodical intervals of less than six months, contract to pay the bond-holder a sum at some future date, and not being life assurance as hereinbefore defined, or sinking fund or capital redemption insurance business*;

subject as respects any class of assurance business to the special provisions of the Act relating to business of that class.

A Company registered in the United Kingdom transacting business as aforesaid in any part of the world is deemed to be a Company transacting such business within the United Kingdom.

Every Company intending to carry on any Assurance business as above described, or to reinsure any risks under such class of business, must deposit £20,000 with the Paymaster-General in respect of each class proposed, subject to a maximum deposit of £60,000. Incorporation cannot be effected until the deposit has been made, and the Act therefore provides that the payment of the amount may be made in the name of the Company by the Subscribers. The sum is invested by the Paymaster-General in certain securities, the interest being paid from time to time to the Company. The requirements are subject to qualification in certain events.

Companies which commenced to carry on Fire or Accident Insurance or Bond Investment business before the 3rd December, 1909 (the date on which the Act received the Royal Assent), or Employers' Liability Insurance business before the 28th August, 1907 (the date of the passing of the Act of 1907), are not required to make deposits in respect of such businesses.

Where more than one class of business is carried on separate accounts must be kept, the funds belonging to the respective classes of policy holders.

* This definition embodies the alterations effected by The Industrial Assurance Act, 1923, Section 42 (1).

Assurance Companies are required to prepare annually a Revenue Account, Profit and Loss Account, and Balance Sheet in the prescribed forms. These must be printed, and four copies have to be deposited with the Board of Trade. Copies may at the same time be filed with the Registrar, and whenever that is done the Company is relieved from the obligation to include a Statement in the form of a Balance Sheet in its Annual Return. A copy of every Account, Balance Sheet, Abstract, Statement, or Report required to be deposited with the Board of Trade is kept by the Registrar. The charge for inspection is 1s., and copies of the Accounts are obtainable at the rate of 4d. per folio of 72 words.

Unless the Accounts are subject to audit in accordance with the provisions of The Companies Clauses (Consolidation) Act, 1845, Assurance Companies must have their accounts audited as prescribed by The Companies (Consolidation) Act, 1908.

Notices, advertisements, or other official documents issued by Assurance Companies stating the authorised Capital of the Company must also state the amounts subscribed and paid up respectively.

Assurance Companies can only be amalgamated with the sanction of the Court. Copies of the various accounts and documents relating to the transaction must be deposited with the Board of Trade within ten days after any amalgamation has been effected.

On the petition of holders of ten policies of an aggregate value of not less than £10,000 a Company may be wound up by the Court. The leave of the Court must, however, be obtained before the presentation of the petition, and in order to obtain such leave it is necessary to establish a *prima facie* case and to give security for costs. The contracts of a Company unable to pay its debts may be reduced by the Court, upon such terms and conditions as may be thought fit, in place of a Winding-up Order.

The provisions of Section 274 of the Act of 1908 as to the filing of certain documents at the Companies Registry by Companies incorporated abroad and establishing a place of business in the United Kingdom are extended to all Assurance Companies constituted abroad which carry on Assurance business in the United Kingdom, whether incorporated or not.

Special provisions apply to underwriters carrying on Assurance business who are members of Lloyd's, or of any other association of underwriters approved by the Board of Trade, the amount of the deposit required being only £2000. Since the passing of Lloyd's Act, 1911, members of Lloyd's have been able to carry on any kind of Insurance business.

The law relating to Industrial Assurance was consolidated and amended by The Industrial Assurance Act, 1923, and that class of Assurance business can now only be carried on by a registered Friendly Society or by an Assurance Company within the meaning of the Act of 1909, which is either registered under the Companies Acts or the Industrial and Provident Societies Acts or incorporated by special Act.

Subject to certain exceptions therein provided, Industrial Assurance business, for the purposes of the Act of 1923, means the business of effecting Assurances upon human life, premiums in respect of which are received by means of collectors. For the purposes of the Act of 1909, Industrial Assurance business is to be treated as a separate class of Assurance business, and accordingly a separate deposit of £20,000 must be made in respect of such business. Moreover, no charge (except to secure a temporary bank overdraft) can be created on any of a Company's assets in which the Industrial Fund is invested.

In the case of a Company proposed to be registered which takes powers in its Memorandum of Association wide enough to authorise the carrying on of the business

of Assurance, the granting of annuities, or the reinsurance of risks, although not in express terms, the Registrar requires a proviso to be added to the effect that nothing contained in the Memorandum of Association shall empower the Company to carry on the business of Assurance or to grant annuities within the meaning of The Assurance Companies Act, 1909, as extended by The Industrial Assurance Act, 1923, or to reinsure any risks under any class of Assurance business to which those Acts apply.

Mutual Insurance and other Societies having for their object the acquisition of gain, either for themselves or the individual Members thereof, must be incorporated under the Companies Acts if the Membership exceeds twenty. Otherwise they are illegal (Section 1).

AUDITORS.

Every Company must at each Annual Meeting appoint an Auditor or Auditors (not being a Director or Officer of the Company) to hold office until the next Annual Meeting.

A person other than a retiring Auditor may not be appointed to the office unless notice of an intention to nominate him has been given to the Company by a Shareholder at least fourteen days before the Meeting. The Company must send a copy of any such notice to the retiring Auditor, and also inform the Shareholders, either by advertisement or in any other mode allowed by the Articles, not less than seven days before the Meeting. If the Annual Meeting is called for a date fourteen days or less after notice of the intention to nominate a person as Auditor has been received, such notice, though not served within the required time, is to be deemed to have been properly given, and the notice to be despatched by the Company to each Member may be sent or given at the same time as the Notice convening the Meeting [Section 112 (1) to (4)].

If Auditors are not appointed at the Annual Meeting the Board of Trade may, on the application of any Member, appoint one for the current year and fix his remuneration [Section 112 (2)]. This power has been exercised by the Board in many instances.

The first Auditors may be appointed by the Directors before the Statutory Meeting, in which case they remain in office until the first Annual Meeting unless previously removed by the Company in General Meeting. If so removed other persons may be appointed at the same Meeting [Section 112 (5)].

The election of an Auditor should be proposed by a Shareholder not holding the office of Director.

Any casual vacancy in the office of Auditor may be filled by the Directors, but a continuing or surviving Auditor may act notwithstanding that the vacancy continues [Section 112 (6)].

The remuneration of the Auditors must be fixed by the Company in General Meeting, except that in the case of any Auditor appointed before the Statutory Meeting or to fill a casual vacancy the amount may be fixed by the Directors [Section 112 (7)].

The Auditors are required to make a Report to the Shareholders on the Accounts examined by them, and on every Balance Sheet laid before the Company in General Meeting during their tenure of office. In the Report they must state whether or not they have obtained all the information and explanations required, and whether, in their opinion, the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the Company [Section 113 (2)]. The Auditors must take reasonable care that what they certify with regard to the financial affairs of the Company is true, and they must place the facts as to the real financial situation

of the Company before the Members. It is not sufficient simply to indicate how the information can be obtained.*

The Act does not expressly provide that every Company shall prepare a Balance Sheet and submit a copy to its Members; but if a Balance Sheet is prepared and *is laid before the Company in General Meeting* the other provisions of Section 113 come into operation.

In practice it is known that there are Private Companies which never prepare a Balance Sheet; but Public Companies are under a statutory obligation to some extent to do so, as a "Statement in the form of a Balance Sheet" must be included in the Annual List and Summary (*q.v.*) of every such Company.

The Balance Sheet has to be signed by the sole Director if only one, or two Directors if more than one, and either the Auditors' Report must be appended thereto or a reference to the Report must be inserted at the foot of the Balance Sheet. This Report must also be read before the Company in General Meeting, and be open to the inspection of Shareholders, who are entitled to be furnished with copies of the Balance Sheet and Report at a charge not exceeding 6d. per 100 words [Section 113 (3)].

If any copy of a Balance Sheet is issued, circulated, or published without being duly signed, or without either having a copy of the Report attached thereto or containing a reference to the Report at the foot thereof, the Company and every Director or other Officer who is knowingly a party to the default will, on conviction, be liable to a fine not exceeding £50 [Section 113 (4)].

The Auditors have the right of access at all times to the books, accounts, and vouchers of the Company, and they are also entitled to require from the Directors and other Officers whatever information and explanation may be necessary for the performance of their duties [Section 113 (1)].

In the case of a Banking Company registered after the 15th August, 1879, and which has Branch Banks outside Europe, it will suffice for the Auditor to be allowed access to such copies of and extracts from the books and accounts of any such Branch as have been transmitted to the head office in the United Kingdom; and the Balance Sheet must be signed by the Secretary or Manager (if any) and at least three Directors, or by each Director if their number does not exceed three [Section 113 (5)].

• Holders of Preference Shares and Debentures of a Company—not being a Private Company or a Company registered before the 1st July, 1908—have the same right to receive and inspect the Balance Sheets of the Company and Reports of the Auditors and other Reports as is possessed by the holders of Ordinary Shares of the Company (Section 114).

The names and addresses of the Auditors (if any) must be stated on any Prospectus issued by the Company [Section 81 (1) (l)].

BANKING COMPANIES.

No Company, Association, or Partnership with more than ten persons can be formed for the purpose of carrying on the business of Banking unless it is registered under the Companies Acts, or is formed in pursuance of some other Act or of Letters Patent (Section 1).

A Banking Company must, before commencing business, and also on the first Monday in February and the first Tuesday in August in every year, make a statement giving the amount of its Share Capital, the number of Shares into which it is divided, the number of Shares issued, the extent of the Calls made and received on each Share, and the amount of the liabilities and assets on the previous 1st January or 1st July. A copy of the statement (known as "Form C") must be hung up in a conspicuous position at the Registered Office and in every branch office, and Members or creditors are entitled to copies upon payment of 6d. each (Section 108 and the First Schedule).

The Annual Summary of Capital and List of Members of a Limited Company carrying on the business of Banking should include a complete list of the places at which the business of the Company is carried on (Revenue, Friendly Societies, and National Debt Act, 1882, Section 11), and be filed with the Registrar. Banking Companies, which lodge Returns under the Companies Act need not make yearly statements to the Commissioners of Inland Revenue under The Bank Charter Act, 1844.

The liability of Members of a Bank of Issue is unlimited in respect of its own Notes, and a statement to that effect may be made upon the Notes [Section 251 (1) and (3)].

If the Company is wound up and the general assets are not sufficient to satisfy the claims of both note-holders and general creditors, the Members must first satisfy the remaining demands of the note-holders, and are then liable to contribute towards payment of the general creditors a sum equal to the amount realised by the note-holders out of the general assets of the Company [Section 251 (1)].

An investigation of the affairs of a Banking Company may be made by the Board of Trade on the application of Members holding not less than one third of the issued Shares (Section 109).

Bona fide Banking concerns are not "money-lenders" within the meaning of The Money-lenders Act, 1900. No money-lender may be registered under that Act by any name including the word "Bank" or suggesting that he carries on the business of Banking.

During the period of five years immediately after the termination of the war and thereafter until Parliament otherwise determines no banking business may be carried on within the United Kingdom—

- (a) By a Company which is an enemy controlled corporation within the meaning of this Act*; or

* * Trading with The Enemy (Amendment) Act, 1918.

- (b) By a firm or individual, if the business carried on is one with respect to which, if a state of war still continued, an Order for the winding up thereof could have been made under Section 1 of The Trading with the Enemy Amendment Act, 1916.

Where it appears to the Board of Trade that any banking business is carried on in contravention of this provision the Board of Trade shall order the business to be wound up.

The Board of Trade has power to appoint inspectors for the purpose of ascertaining, during the period aforesaid, whether any banking business is carried on by a Company which is an enemy controlled Corporation or for the benefit of or under the control of subjects of an enemy State, and the provisions of The Trading with the Enemy Acts, 1914 to 1916, relating to inspection shall apply accordingly.

The Board of Trade may, after consultation with the Treasury, make rules defining what business is, for the purpose of this section, to be deemed banking business.

For the purpose of these provisions the expression "enemy controlled Corporation" means any Corporation—

- (a) Where the majority of the Directors or the persons occupying the position of Directors, by whatever name called, are subjects of an enemy State; or
- (b) Where it appears to the Board of Trade that the majority of the voting power or Shares is in the hands of persons who are subjects of an enemy State, or who exercise their voting powers or hold the Shares directly or indirectly on behalf of persons who are subjects of an enemy State; or
- (c) Where the control is by any means whatever in the hands of persons who are subjects of an enemy State; or
- (d) Where the executive is an enemy controlled Corporation or where the majority of the executive are appointed by an enemy controlled Corporation.

The expression "enemy State" means a State with which His Majesty is now* at war (Trading with the Enemy (Amendment) Act, 1918, Section 13).

* The date of passing of the Act, i.e. 8th August, 1918.

As to the special provisions relating to the audit of Banking Companies' Accounts *see* under AUDITORS.

BANKRUPTS.

A person already bankrupt may become a Member of a Company, and may be appointed a Director,* but it is usual to provide in the Articles that a Director shall vacate office upon his becoming bankrupt or insolvent,† or compounding with his creditors. There is, however, no statutory provision to that effect.

On a Member being declared bankrupt the right to transfer the Shares standing in his name passes to his trustee. If Clause 22 of Table A (1908) applies, or the Articles contain a provision similar thereto, the trustee may be himself registered as a Member in respect of the Shares. Instead of transferring the Shares or being registered as a Member in respect thereof the trustee may, subject to the provisions of the Articles, allow the Shares to remain in the name of the bankrupt or may disclaim the Shares, but such disclaimer will not affect the rights of third parties.‡

Where fully paid Shares are proposed to be transferred to a bankrupt, the Directors cannot, unless the Articles of Association otherwise provide, refuse to sanction the transfer on the ground that if the transfer is registered the Shares will pass to the trustee in bankruptcy.§

Articles also generally provide that a trustee in bankruptcy may vote at a Meeting of the Company if he has produced the Order of Court and thus proved his appointment. No note as to any lien which the Company may have upon the Shares of the bankrupt may be made either on the Share Certificate or in the Register of Members.||

* *Dawson v. African Consolidated Land and Trading Co.*, [1898] 1 Ch. 6.

† As to the meaning of insolvent *see* *London and Counties Assets Company v. Brighton Grand Concert Hall and Picture Palace*, [1915] 2 K. B. 493.

‡ *Wise v. Lansdell*, [1921] 1 Ch. 420.

§ *Sutton v. English and Colonial Produce Company*, [1902] 2 Ch. 502.

|| *W. Key & Son*, [1902] 1 Ch. 467.

In a winding up a bankrupt Member is represented by his trustee, who becomes a contributory, and may be called upon to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets any money due from the bankrupt in respect of his liability to contribute to the assets of the Company. The estimated value of the bankrupt's liability to future Calls, as well as Calls already made, may also be proved against the estate (Section 127).

BILLS OF EXCHANGE &c.

A Bill of Exchange or Promissory Note is regarded as having been made, accepted, or endorsed on behalf of a Company if made, accepted, or endorsed in the name of or by or on behalf of or on account of the Company by any person acting under its authority (Section 77).

The name of the Company must appear in legible characters on all Bills of Exchange, Promissory Notes, Endorsements, Cheques, and Orders for money or goods signed by the Company or on its behalf. Any Director or other Officer contravening this requirement is liable to a fine of £50, and is also personally liable to the holder of the document unless the amount is paid by the Company (Section 63).

Directors and Secretaries should also bear in mind Section 26 (1) of The Bills of Exchange Act, 1882, which is as follows:—

Where a person signs a Bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

When signing Cheques, Bills, &c., Officers should protect themselves by seeing that words indicating that

they sign for and on behalf of the Company appear on the documents, it having been held that where Directors signed a Cheque without such a statement appearing thereon they had rendered themselves personally liable for the amount, notwithstanding that the name of the Company appeared at the top of the Cheque and the word "Director," was added after each signature.*

Bills of Exchange and Promissory Notes are liable to duty according to the following scale:—

Where the amount or value of the money for which the Bill or Note is drawn or made does not				£	s.	d.
exceed	£10	...	...	...	0	0 2
Exceeds	£10 and does not exceed	£25	...	...	0	0 3
"	£25	"	"	£50	...	0 0 6
"	£50	"	"	£75	...	0 0 9
"	£75	"	"	£100	...	0 1 0
"	£100—					

For every £100, and also for any fractional part of

£100, of such amount or value 0 1 0

A Bill of Exchange payable on demand or at sight, or on presentation, or within three days after date or sight, is liable to the fixed duty of 2d.

A Promissory Note, even if on demand, must always be stamped with the *ad valorem* duty.

[Stamp Act, 1891, Schedule; Finance Act, 1899, Section 10 (2); and Finance Act, 1918, Section 36.]

For the purposes of the Stamp Act the term "Bill of Exchange" includes Draft, Order, Cheque, Letter of Credit, and any document or writing (except a Bank Note) entitling any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money; and the term "Promissory Note" includes any document or writing (except a Bank Note) containing a promise to pay any sum of money (Stamp Act, 1891, Sections 32 and 33).

Bills and Notes must be stamped before execution. A fine of £10 is incurred by any person who issues, endorses, transfers, negotiates, presents for payment, or

* *Landes v. Marcus*, [1909] 25 T. L. R. 478.

pays any unstamped Bill or Note. The stamps must be impressed, except in the case of Bills payable on demand or at sight or on presentation or within three days after date or sight, which are liable to the fixed duty of 2d. and to which adhesive stamps may be affixed. If adhesive stamps are used on the latter they must be cancelled by the person by whom the Bill is signed before delivery (Stamp Act, 1891, Sections 34, 37, and 38, and Finance Act, 1918, Section 36).

• Foreign Bills of Exchange paid or endorsed or negotiated in the United Kingdom are liable to duty at the rate of 6d. for every £100, with the exception that where the amount is less than £50 the scale set out on the preceding page applies (Finance Act, 1899, Section 10).

Before a person receiving a Foreign Bill or Note presents it for payment, or endorses, transfers, negotiates, or pays the Bill or Note, he must affix an appropriate adhesive stamp of the right amount and cancel it (Stamp Act, 1891, Section 35).

BONUS SHARES.

A Company may only issue its Shares for valuable consideration, which may be money or money's worth, or a combination of the two. The issue of Shares, by way of Bonus, without consideration is illegal, and no power taken in the Memorandum or Articles can render it otherwise. But Shares may be allotted by way of commission pursuant to Section 89 (*see* COMMISSIONS) or by way of set-off against a Dividend declared and expressed to be payable out of undivided profit or out of Reserve (*see* CAPITALISATION). A Dividend can only be so satisfied by the issue of such Shares where authority to pay Dividends otherwise than in cash is contained in the Company's Articles. Where the requisite power is not found in the Articles it must first be taken by Special Resolution.

If the Dividend is paid by the issue of fully or partly paid Shares without the Members being given the option of taking it in cash a contract constituting the title of the allottees to the Shares should be filed with the Registrar of Companies in accordance with Section 88 of the Act.

Persons to whom Shares have been allotted without good consideration are liable for Calls, even though a contract providing for their allotment may have been filed and the Shares be described as 'fully paid in the Share Certificate.*

BOOKS.

The following is a list of the Principal Registers &c. required in addition to the ordinary Account Books:—

BY COMPANIES LIMITED BY SHARES, COMPANIES LIMITED BY GUARANTEE WITH SHARE CAPITAL, AND UNLIMITED COMPANIES WITH SHARE CAPITAL.

Agenda Book.

Directors' Minute Book.

General Minute Book.

Letters of Allotment, impressed with 1d or 6d. stamps.

Register of Applications and Allotments.

† Register of Returns of Allotments.

Register of Members and Share Ledger.

Register of Transfers.

Annual List and Summary.

Register of Directors or Managers.

Register of Debentures.

Register of Mortgages and Bonds.

Share Certificates.

Notices of Call.

BY COMPANIES LIMITED BY GUARANTEE AND UNLIMITED COMPANIES WITHOUT SHARE CAPITAL.

Agenda Book.

Directors' Minute Book.

General Minute Book.

* *Alkaline Reduction Syndicate, Ames' Case*, [1896] W. N. 79.

† Required only by Companies Limited by Shares.

Register of Members.
 Register of Directors or Managers.
 Register of Debentures.
 Register of Mortgages and Bonds.

The importance of the books being correctly kept can hardly be over-emphasised, as the consequences of errors therein or omissions therefrom may be very serious.

The Auditors must be allowed access to all the books of the Company, and they may question the Directors and other Officers upon items appearing therein (Section 113).

The Register of Members is also liable to inspection by a Shareholder gratis, or by any other person on payment of a fee not exceeding 1s., and a copy thereof must be supplied, if desired, at the rate of 6d. per 100 words [Section 30 (1) and (2)].

Power to inspect the Register of Mortgages is also granted by Statute to creditors or Members free, and to any other person on payment of a maximum fee of 1s. (Section 101).

In a winding up by or subject to the supervision of the Court, creditors or contributories of a Company may obtain an order for inspection of the books (Section 221). Upon dissolution, in the case of a voluntary winding up, the books are disposed of in accordance with the Extraordinary Resolution of the Members at the final Meeting; but where the winding up is by or subject to the supervision of the Court the direction is given by the Court (Section 222).

If, with the object of defrauding or deceiving any person, any Director, Officer, or contributory of a Company in liquidation destroys, alters, or falsifies any books, papers, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any Register, book of account, or document of the Company, he is liable to imprisonment for a term not exceeding two years, with or without hard labour (Section 216).

Where a Company is being wound up, the books and papers of the Company and of the Liquidators are *prima facie* evidence, as between the contributories, of the truth of all matters purporting to be recorded therein (Section 220). "Books and papers" include accounts, deeds, writings, and documents (Section 285).

BORROWING.

A Company may raise money by various means. It may borrow on a loan which is not in any way secured; it may give bills; it may issue Debentures charging its undertaking in favour of the holders; and it may execute a Mortgage or Charge secured on the whole or any part of its assets.

In all these cases careful regard must be had to the provisions of the Memorandum and Articles. Usually express power to borrow is taken by the Memorandum, but if the document is silent the power will not be implied "unless it be properly incident to the course and conduct of the business for its proper purposes." Thus it has been held that a Building Society cannot borrow without express power to do so,* but with Trading Companies in general the power is implied.† Articles of Association frequently restrict the power of the Directors in this respect, and require the sanction of a General Meeting before any sum exceeding a specified amount or proportion of the issued Share Capital is borrowed.

All Companies, except those which are Private Companies coming within the Statutory definition, are prohibited from exercising any borrowing powers until the Registrar's Trading Certificate has been obtained. (*See pp. 50 and 51.*)

* *Blackburn Building Society v. Cunliffe, Brooks & Co.*, [1882] 22 Ch. D. 61; [1884] 9 A. C. 857.

† *General Auction Estate Co. v. Smith*, [1891] 3 Ch. 432.

Where any Local Authority, Corporation, Company, or body of persons formed or established in the United Kingdom proposes to issue any "Loan Capital" a Statement of the amount intended to be secured by the issue must be lodged with the Commissioners of Inland Revenue before the issue is made. The Statement must be stamped with duty at the rate of 2s. 6d. for every £100 of the sum secured unless the duty has been paid on any Trust Deed or other document securing the loan capital proposed to be issued. Default in complying with this requirement renders the Company or other body liable to a fine of ten per cent. on the amount of the duty, and the like fine for every month after the first month during which the neglect or failure continues. The expression "Loan Capital" includes Debenture Stock, County, Corporation, or Municipal Stock, or Funded Debt, or any Capital which is borrowed or has the character of borrowed money; but it does not include "any overdraft at the Bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months" (Finance Act, 1899, Section 8). Where the overdraft does not come strictly within the exception the Commissioners require a Statement furnished.

Where the amount of the loan is secured by a Trust Deed or Debentures, or any other document liable to *ad valorem* Mortgage Duty, it is not the practice to furnish the particulars referred to.

Where a duly stamped Statement has been delivered after the 9th August, 1907, by a Company in respect of Loan Capital which has been wholly or partly applied for the purpose of the conversion or consolidation of existing Loan Capital, a claim may be made for repayment of duty at the rate of 2s. for every £100 of the Capital to which the Statement relates which has been so applied (Finance Act, 1907, Section 10).

See also DEBENTURES, FRAUDULENT PREFERENCE, and MORTGAGES AND CHARGES.

CALLS ON SHARES.

The Holders of Shares not fully paid up are liable to Calls in accordance with the provisions of the Articles of Association and the terms of issue. The clauses dealing with Calls in Table A of 1862 are Nos. 4 to 7, in Table A of 1906 are Nos. 12 to 17, and in Table A of 1908 (the present Table) are Nos. 12 to 17. If authorised by its Articles a Company may make arrangements on the issue of Shares for a difference between Shareholders in the amounts and times of payment of Calls, and may also accept from Members any amount unpaid on their Shares although not called up (Section 39). All money payable by any Member in respect of Calls properly made is a debt due from him to the Company. Such debt is in England and Ireland of the nature of a specialty debt, and therefore not Statute barred until the lapse of twenty years [Section 14 (2)].

A Limited Company may by Special Resolution determine that any portion of its Share Capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the Company being wound up, and thereupon that portion of its Share Capital cannot be called up except in such event and for such purposes (Section 59). When this course has been adopted the Company is apparently unable to determine afterwards that the amounts reserved shall be liable to be called up as and when may be thought fit.* If, however, the reservation is purported to be made in the *original Articles*, the Company can by Special Resolution determine at any time that the sums reserved shall be called up as required.†

Various particulars relating to the Calls made and amounts received must be given in the Annual Returns.

* *Bartlett v. Mayfair Property Company*, [1898] 2 Ch. 28, 32.

† *Milleson v. National Insurance Company*, [1894] 1 Ch. 200.

Articles of Association usually prescribe certain penalties for nonpayment of Calls, such as payment of interest on the arrear, inability to vote, and (after due notice) forfeiture of the Shares. Dividends, moreover, are almost invariably payable only upon the amounts paid on the Shares; and may, if necessary, be retained in reduction of unpaid Calls. A Company may prove against the estate of a bankrupt Member or of a Member dying insolvent not only for Calls made but also for the estimated value of the liability to future Calls on Shares of the bankrupt or deceased.*

Articles of Association should also provide that the joint holders of Shares are jointly and severally liable to pay all Calls thereon, otherwise if judgment be obtained against one of them the others are freed from the obligation.†

A frequent provision is that payments in advance of Calls may be received by the Company, who may pay interest on such sums at such rates as may be agreed upon between the Member and the Directors. If the interest is to exceed six per cent., the sanction of the Company in General Meeting is usually required. The interest may continue to be paid by the Company even though no profits may be earned. Sums paid in advance of Calls, however, cannot be returned in a liquidation until the creditors' claims have been satisfied, but will rank before repayments to Shareholders.

Where undivided profits have accumulated and the amount can, *with the sanction of the Shareholders*, be distributed as Dividend or Bonus, the Company may by Special Resolution determine (instead of paying the amount away unconditionally) to distribute the whole or any part thereof in reduction of the paid-up Capital, but subject to recall at any time by means of Calls duly made [Section 40 (1).]

* Bankruptcy Act, 1914, Section 30; and *McMahon, In re, Fuller v. McMahon*, [1900] 2 L. J. Ch. 142.

† *Kendal v. Hamilton*, [1879] 4 A. C. 504.

Any Member who does not wish to receive his proportion on these conditions may require the Company to retain and invest the sum due to him and to hold it in satisfaction of future Calls, paying him meanwhile the interest earned by such investment while it remains uncalled [Section 40 (3).]

When a Company goes into liquidation the Liquidator may call up any amount unpaid on the Shares issued. Should the existing Members be unable to satisfy the contributions required, the Liquidator may make Calls upon persons who have ceased to be Members within a year from the commencement of the winding up in order to meet debts incurred before they ceased to be Members (*see* CONTRIBUTORIES). In making a Call the Liquidator may take into consideration the possibility of some of the Calls not being paid (Section 166 and 186). In a winding up by the Court the Liquidator must obtain the sanction of the Court or the Committee of Inspection before making the Call (Section 173).

In a winding up debts due from the Company to a Shareholder cannot be set off by him against his unpaid Calls.* Such Calls must be paid to the Liquidator, and the Shareholder will rank as a secured or unsecured creditor, as the case may be, in respect of the sums due to him.

See also FORFEITURE AND SURRENDER OF SHARES *and* JOINT HOLDERS.

CANCELLATION OF SHARES.

If authority is contained in the Articles of Association a Company Limited by Shares may cancel any Shares which have not been taken or agreed to be taken by any person and diminish the amount of its Share Capital accordingly. The nature of the Resolution required—whether Ordinary, Extraordinary, or Special—is determined by the provisions of the Articles, and as the

* *Overend, Gurney & Co., Grissell's Case*, [1866] L. R., 1 Ch. 528.

cancellation is not deemed to be a reduction of Capital within the meaning of the Act it is not necessary to obtain the sanction of the Court [Section 41 (1) and (4)].

Every copy of the Memorandum of Association issued after the cancellation has been effected must be in accordance with the alteration. If this requirement is not complied with the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, will be liable to a fine not exceeding £1 for each copy in respect of which the default occurs [Section 41 (3)].

If the Articles do not contain the requisite authority, they must be altered by Special Resolution before the Resolution effecting the cancellation is passed.

Occasionally the Capital is increased simultaneously with the cancellation, new Shares being created to the same amount as the old, but carrying different rights. In such instances fees are payable on registration of the increase as in an ordinary case, but no Capital duty is claimed by the Registrar.

CAPITALISATION.

It is frequently desired where a Company has accumulated large reserves of undivided profits to capitalise a portion or the whole thereof and distribute the amount as a "Bonus" among the Members in proportion to their respective interests.

If the issued Shares are not fully paid the capitalisation of the undivided profits may be effected by declaring a Bonus and satisfying the same by crediting each partly paid Share with a proportionate amount of such Bonus.

More generally the issued Shares are already fully paid up, in which case the capitalisation can only be effected by the issue to the Members, in accordance with their rights under the Articles, of fully or partly paid

Shares. Where necessary the nominal Capital must be increased in the manner prescribed by the Company's Articles.

A Dividend or Bonus can only be paid in cash, unless power to satisfy the same in some other manner has been taken by the Company.* Accordingly, in the absence of such power, the capitalisation is effected by giving the Members an unconditional right to receive the Dividend or Bonus in cash and by the Members authorising the Company to apply the amount due to them in paying up, in whole or in part the number of Shares agreed to be taken by them. This procedure, however, is not altogether free from objection, as the amount of Dividend or Bonus to which each Member becomes entitled must be regarded as income and, in those circumstances, if the amount is large he will be liable to super-tax in respect thereof.

Where the Company has power to pay Dividends or Bonuses otherwise than in cash or such power is taken by altering the Articles of Association, the Company can effect the capitalisation by declaring the Bonus and authorising the Directors to satisfy the same by the allotment of fully or partly paid Shares. In such circumstances the Bonus Shares are received by the Members as Capital, and no liability to super-tax can arise.†

Whichever procedure is adopted the Bonus should be declared to be "free of Income Tax."

The Article authorising the capitalisation or the resolution effecting it should empower the Directors, where the Bonus takes the form of fully or partly paid Shares, to execute an agreement, in accordance with Section 88 of the Act, between the Company and a representative Shareholder on behalf of the class entitled to receive the Bonus Shares, providing for the allotment

* *Wood v. Odessa Waterworks Co.*, [1889] 42 Ch. D. 645.

† *Inland Revenue Commissioners v. Blott*, [1921] 2 A. C. 171.

to them of fully or partly paid Shares in satisfaction of the Dividend or Bonus. The agreement should be executed before the Shares are allotted and be filed at the Companies Registry with a Return of Allotments (*q.v.*) within one month after the allotment.

The issue of "Bonus" Shares, if the above conditions are observed, is perfectly legal. But where Shares are issued without good consideration the allottees are liable to Calls, even though a contract providing for the allotment of such Shares has been filed.*

CERTIFICATE OF INCORPORATION.

On the registration of the Memorandum of Association the Registrar issues a Certificate that the Company is incorporated, and in the case of a Limited Company that it is limited. From the date of incorporation the Subscribers to the Memorandum, together with such other persons as may from time to time become Members of the Company, form a body corporate, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a Common Seal, with power to hold lands, but with such liability on the part of the Members to contribute to the assets in the event of a winding up as is mentioned in the Act (Section 16). As to this liability *see p. 60 et seq.*

The Certificate of Incorporation is conclusive evidence that all the requirements of the Act of 1908 in respect of registration and all matters precedent and incidental thereto have been complied with, and that the Association is a Company authorised to be registered and duly registered under the Statute. As evidence of compliance with the Act a Statutory Declaration on the prescribed Form (impressed with a fee stamp of 5s.) by a Solicitor engaged in the formation of the Company or a person named in the Articles as a Director or Secretary of the

* Eddystone Marine Insurance Co., [1893] 3 Ch. 9.

Company is lodged with the Memorandum and other documents which are required to be presented on application being made for incorporation (Section 17).

CHAIRMAN.

The Articles of Association usually provide that the Chairman of the Board of Directors, or in his absence another Director, shall preside at General Meetings as well as at Directors' Meetings. If, however, the Articles do not specify who is to be Chairman, or provide for his election, the Members present at a Meeting may appoint any person to preside (Section 67).

It is also usual for the Articles to state that the Chairman's declaration as to the result of the voting on a show of hands on any resolution at a General Meeting, and an entry thereof in the Minute Book, shall be conclusive evidence, without proof of the number or proportion of the votes recorded in favour of or against the resolution. Even without an entry in the Minute Book, the Chairman's declaration is conclusive where Meetings are held for the purpose of dealing with proposed Extraordinary or Special Resolutions [Section 69 (3)]; and *all* proceedings at General Meetings, if duly entered in the Minute Book and signed, are deemed to be valid until the contrary is proved (Section 71). But at any Meeting at which an Extraordinary Resolution is submitted to be passed or a Special Resolution is submitted to be passed or confirmed a poll may be demanded by the required number of persons [Section 69 (4)], and power is usually given in the Articles for a poll to be demanded in respect of an Ordinary Resolution.

The Chairman must assure himself that a quorum of Members is present, preserve order, conduct the proceedings regularly, endeavouring to facilitate the business, and he must also see that the sense of the Meeting is correctly ascertained with regard to any question before it. He has power to determine who may address the Meeting. Points

of order must be decided by him, and he should not permit the transaction of business unless it is within the scope of the Notice of Meeting. He can close the Meeting for persistent disorder—although it is usually better to adjourn for a few minutes in any such case—and, with the consent of the Meeting, may adopt the closure. If the Articles give him authority he may adjourn a Meeting, although he must not act capriciously.

All motions and amendments (which it is advisable to have in writing) must be put to the Meeting. After being proposed they are usually seconded, but that course is not essential unless required by the Articles, or it has become the established custom to do so. If an amendment is carried it must be put as a substantive motion. A Chairman should dispose of one amendment at a time, and refuse to accept amendments which are out of order. If, however, the Chairman improperly refuses to put an amendment the Resolution carried will be invalidated.* But an amendment introducing an extraneous subject or one which in effect negatives the motion before the Meeting, is irregular, and no amendment to a Special Resolution, when submitted for confirmation, is permissible, as such Resolution must be confirmed exactly as passed or rejected in its entirety.

If a poll is demanded it is the duty of the Chairman to decide whether the demand is properly made according to the Articles. A poll must be taken in writing, and each Shareholder must specify the number of votes he gives. Scrutineers should be appointed in order to check, by reference to the Register of Members, the number of votes to which each person is entitled. The result of the poll, when ascertained, must be declared by the Chairman.

The Agenda should, as a rule, be strictly adhered to. In the case of General Meetings no business other than that described by the Company's Articles as ordinary

* *Henderson v. Bank of Australasia*, [1890] 45 Ch. D. 330

business should be transacted unless due notice thereof has been given. The notice should indicate the nature of the business as clearly as possible.

Articles usually give the Chairman the right to a second or casting vote in the event of an equality of votes. He has, however, no such right, at Common Law.*

See also GENERAL MEETINGS, MEETINGS, and VOTES.

CLUBS.

A Club which supplies intoxicating liquors to its Members is required by The Licensing (Consolidation) Act, 1910, as amended by The Licensing Act, 1921, to make in the month of January in each year a Return to the Clerk to the Justices of the Petty Sessional Division in whose district the Club is situated, and also to keep a Register of names and addresses of the Members and a record of the latest payment of their subscriptions. The Annual Return referred to (prepared on the proper Form) must set out—

- (1) The Name of the Club;
- (2) The Objects of the Club;
- (3) The Address of the Club;
- (4) The Name of the Secretary;
- (5) The Number of Members;
- (6) The Rules of the Club relating to—
 - (a) The Election of Members and the Admission of Temporary and Honorary Members and of Guests;
 - (b) The Terms of Subscription and Entrance, Fee (if any);
 - (c) The Cessation of Membership;
 - (d) The Hours of Opening and Closing;
 - (e) The Permitted Hours for the Supply of Intoxicating Liquor:—
 - Weekdays;
 - Sundays, Christmas Day, and Good Friday; and
 - (f) The Mode of Altering the Rules.

The fee payable on each Return is 5s.

* *Nell v. Longbottom*, [1894] 1 Q. B. 767.

Default in complying with these provisions renders the Secretary liable on summary conviction to a fine not exceeding £20. In the case of a second or subsequent offence the maximum fine is increased to £50, and the Secretary may also be sentenced to imprisonment.

In the ordinary course the funds of an unincorporated Club are vested in Trustees elected from time to time by the Members, but where a Club has an accumulation of funds or contemplates the acquisition of the Club premises it is generally considered advisable to secure the advantages afforded by incorporation. In such cases the more usual procedure is to effect registration of a Company Limited by Guarantee without a Share Capital, each Member of the Company being liable in a winding up to the extent of his guarantee (*see* p. 55). Where, however, it is desired to raise funds by the issue of Shares, a Company Limited by Shares should be formed, and this mode of registration does not create any difficulty, so far as the Licensing Acts are concerned, provided that the Company is formed on the basis that every Shareholder of the Company shall be a Member of the Club and *vice versa*.

• COLONIAL REGISTER.

A Company incorporated in the United Kingdom having a Share Capital and whose objects comprise the transaction of business in a Colony, may, if so authorised by its Articles, cause to be kept in any Colony in which it transacts business a Branch Register of Members residing in that Colony. Notice of the situation of the office where any Colonial Register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued, must be filed with the Registrar (Section 34).

The Colonial Register must be kept in the same manner as the principal Register, of which it is deemed to be a part, and a copy of every entry therein must be sent to the principal Office, where a duplicate of the

Colonial Register is required to be kept. The duplicate *Colonial Register is also regarded as part of the principal Register.*

The Shares registered in a Colonial Register must be kept distinct from those registered in the principal Register, and all transactions relating to such Shares must be entered in the Colonial Register (Section 35).

Instruments of transfer of Shares registered in a Colonial Register are exempt from British Stamp Duty if executed out of the United Kingdom [Section 36.(a)].

On the death of a Member registered in a Colonial Register, but domiciled in the United Kingdom, his Shares are deemed part of his estate in the United Kingdom [Section 36 (b)].

A Colonial Register may, like the principal Register, be closed for any time or times, not exceeding in the whole thirty days in each year, but the notice required to be advertised must appear in some newspaper circulating in the district wherein the book is kept (Section 35).

Subject to the foregoing statutory requirements, a Company may, by its Articles, make any provisions it may think fit respecting the keeping of a Colonial Register.

The term "Colony" includes British India and the Commonwealth of Australia (Section 34).

See also REGISTER OF MEMBERS and SEAL.

COMMENCEMENT OF BUSINESS AND EXERCISE OF BORROWING POWERS.

A Public Company is prohibited from commencing any business or exercising any borrowing powers unless—

- (a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the Minimum Subscription; and
- (b) Every Director of the Company has paid to the Company on each of the Shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the Shares offered for

public subscription, or, in the case of a Company which does not issue a Prospectus inviting the public to subscribe for its Shares, on the Shares payable in cash; and

- (c) There has been filed with the Registrar of Companies a Statutory Declaration by the Secretary or one of the Directors, in the prescribed form, that the aforesaid conditions have been complied with; and
- (d) In the case of a Company which does not issue a Prospectus inviting the public to subscribe for its Shares, there has been filed with the Registrar of Companies a Statement in Lieu of Prospectus.

The above paragraphs are set out in the order in which they appear in Section 87 (1), but actually the Statement referred to in Paragraph (d) must be filed before the allotment referred to in Paragraph (a) is made. (See p. 231.)

On the Statutory Declaration being filed the Registrar issues his Certificate that the Company is entitled to commence business, and such Certificate (usually described as the "Trading Certificate") is conclusive evidence of the fact [Section 87 (2)].

Any Contract made by the Company before the date at which it is entitled to commence business will be provisional only, but will become binding on that date [Section 87 (3)].

If a Public Company commences business or exercises any borrowing powers before the foregoing provisions have been complied with, every person responsible for the contravention will, without prejudice to any other liability, be liable to a fine not exceeding £50 a day [Section 87 (5)].

These provisions do not apply to Private Companies [Section 87 (6)], which may therefore commence business as soon as incorporation has been effected. It is, however, important to bear in mind that Associations Not for Profit, Companies Limited by Guarantee, and Unlimited Companies, if registered without Share Capital, are not

Private Companies within the meaning of the Act, as they cannot be brought within the statutory definition of the term (*see* p. 171). In such cases therefore Statements in Lieu of Prospectus and Declarations as mentioned must be filed and Trading Certificates obtained.

See also ALLOTMENT OF SHARES and MINIMUM SUBSCRIPTION.

COMMISSIONS AND DISCOUNTS.

Companies, whether Public or Private, are at liberty to pay commission to any person in consideration of his subscribing, or agreeing to subscribe, or procuring, or agreeing to procure, subscriptions for Shares, provided the prescribed conditions are observed. If the Shares are offered to the Public the payment will not be lawful unless (a) it is authorised by the Articles, (b) the amount of the commission does not exceed the amount or rate per cent. authorised, and (c) the amount or rate is disclosed in the Prospectus. Where Shares are issued without being offered to the public, commissions may be paid under the same conditions, with the exception that the amount or rate must be disclosed in the Statement in Lieu of Prospectus or in a Statement in the prescribed form (which must be filed with the Registrar before the allotment of any of the Shares in respect of which the commission is paid or payable*), and in any circular or notice, not being a Prospectus, inviting subscriptions for the Shares. No commission, discount, or allowance in respect of any Shares (other than brokerage) may be paid out of Capital except under these conditions [Sections 81 (1) and 89].

The power of a Company to pay brokerage is not affected by the foregoing provisions, and a Promoter of or Vendor to a Company, or any other person receiving money or Shares from a Company, may pay a commission out of any moneys or Shares received by him

* *Andrae v. Zinc Mines of Great Britain, Limited*, [1918] 2 K. B. 454.

from the Company, provided the payment would be legal if made directly by the Company [Section 89 (3)].

No restrictions are imposed in regard to the payment of commission to underwriters or others for placing or guaranteeing the taking up of Debentures, and Debentures (unlike Shares) may be issued at a discount. If, however, a commission, allowance, or discount be paid or made, either directly or indirectly, the fact must be disclosed by the Particulars of the Charge filed with the Registrar (*see* p. 69).

The amount of any commission paid by a Company in respect of any Shares or Debentures, or allowed by way of discount in respect of any Debentures, or so much thereof as has not been written off, must also be stated in every Balance Sheet until the whole amount has been written off and every Annual Return must disclose the amount so paid or allowed since the date of the previous Return [Sections 26 (2) and 90].

A Secretary or other Officer receiving a commission of any kind prohibited by The Prevention of Corruption Act, 1906, is, of course, liable to prosecution under that Act, apart from any provision in the Companies Acts.

"COMPANY."

The word "Company," where used in the Act or in this book, has reference (unless the context otherwise requires) only to Companies formed and registered under the Joint Stock Companies Acts,* The Companies Act, 1862, or The Companies Acts, 1908 to 1917.

COMPANIES LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL.

Very few Guarantee Companies are registered with a Share Capital, as the Members are liable for any amount unpaid on the Shares which they hold in addition to being liable in respect of the guarantee, without any corresponding advantage.

* As to what is included in this expression *see* Section 285 of the Act.

Each Member of a Company so registered has to undertake "to contribute to the assets of the Company in the event of its being wound up while he is a Member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceases to be a Member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount" (Section 4). The amount of the guarantee by each Member, which has to be specified in the fifth Clause of the Memorandum, may be any sum thought fit, however small or large. £1 is a common sum. The amount of the Nominal Capital should be specified in both the Memorandum and the Articles [Sections 4 (2) and 10 (3)], although, curiously enough, the specimen Articles in Form C in the Third Schedule to the Act of 1908 do not include any Article stating the amount of Share Capital.

If the requisite provisions are contained in the Articles, a Company Limited by Guarantee with a Share Capital may be a Private Company. It will otherwise come within the category of Public Companies.

The duty and fees payable on incorporation are the same as on the incorporation of a Company Limited by Shares.

The same Registers have to be kept and the same Returns (except Returns of the Allotment of Shares) filed as in the case of Companies Limited by Shares.

If the Company was registered on or after the 1st January, 1901, its Capital may be increased or reduced in the same way as that of a Company Limited by Shares (Section 56). (*See INCREASE and REDUCTION OF CAPITAL.*)

A provision in the Memorandum or Articles or in any resolution of a Company Limited by Guarantee registered after the 31st December, 1900, purporting to divide the

undertaking of the Company into Shares or interests is treated as a provision for Share Capital, even though the nominal amount or number of the Shares or interests is not specified [Section 21.(2)].

**COMPANIES LIMITED BY GUARANTEE AND NOT
HAVING A SHARE CAPITAL.**

This form of registration is frequently taken advantage of by Associations formed for the purpose of Mutual Insurance and Trade Protection and by Clubs of a sporting, social, or other character; but it is not available where it is intended that the proposed Company shall be engaged in trading operations.

Each Member of a Company Limited by Guarantee without a Share Capital is liable in a winding up to the extent of his guarantee, as explained on p. 54, but he incurs no further liability.

The Articles must state the number of Members with which the Company proposes to be registered [Section 10 (4)]. The table of fees payable on registration is set out on p. 390.

Any provision in the Memorandum or Articles or in any resolution of a Company Limited by Guarantee and not having a Share Capital, and registered after the 31st December, 1900, purporting to give any person a right to participate in the divisible profits otherwise than as a Member is void [Section 21 (1)].

A Guarantee Company without Share Capital must file with the Registrar of Companies a Notice of the Situation of the Registered Office or of any change therein, Particulars of its Directors or Managers, and of any change in the Particulars respecting those officers recorded in the Register of Directors as they occur, copies of all Special and Extraordinary Resolutions, and Notice of any increase in the number of its Members.

COMPANIES LIMITED BY SHARES.

For obvious reasons persons investing money in Commercial and Industrial concerns usually desire to limit their liability. In an ordinary partnership each member's liability is unlimited, and, although registration under The Limited Partnerships Act, 1907, confers on a "limited partner" the benefit of limitation of liability, he is under various disabilities, and the general partner's liability is unlimited. A person may, however, invest any sum he may have at his disposal in a Company Limited by Shares without incurring any liability beyond the amount unpaid on the Shares he acquires, or if the Shares are paid for in full without incurring any liability whatever.

Trading bodies are almost invariably registered as Companies Limited by Shares. Members of such Companies are liable to Calls, to the extent of any amount unpaid on the Shares held by them, which may be made from time to time by the Directors according to the provisions of the Articles or of any Prospectus relating to the issue of the Shares. On the whole of the balance being paid the liability of a Member altogether ceases.

The management of the Company is usually vested in one or more Directors. A Secretary and such other Officers as may be considered necessary are also appointed.

The profits of the Company are dealt with in accordance with the Memorandum and Articles. These generally entitle Shareholders to Dividends out of profits in proportion to the amount paid or credited as paid on the Shares held by them. The Capital may be divided into different classes of Shares, the holders of each class having rights to Dividends and power to vote in accordance with the Memorandum and Articles.

The principal features of a Company Limited by Shares can be ascertained by reference to the various

headings in this work. The more important documents required to be filed with the Registrar after incorporation are—

- Notice of Situation of Registered Office.
- Notice of Change of Situation of Registered Office.
- Return of Directors or Managers.
- *Prospectus.
- *Statement in Lieu of Prospectus.
- *Declaration of Compliance by Company Issuing Share Prospectus (prior to commencement of business).
- *Declaration of Compliance by Company filing Statement in Lieu of Prospectus (prior to commencement of business).
- Contract of Sale in respect of Shares Issued for a Consideration other than Cash.
- Contract constituting Title of Allottees to Allotment.
- Return of Allotments.
- Report Prior to Statutory Meeting.
- Annual Return of Capital and Members.
- Extraordinary Resolution.
- Special Resolution.
- Statement of Increase of Capital.
- Notice of Increase of Capital.
- Particulars as to Mortgages and Charges.
- Particulars as to Series of Debentures.
- Particulars as to Debentures where more than One Issue is made of a Series.
- Memorandum of Satisfaction of Mortgage or Charge.
- Notice of Appointment of Receiver or Manager.
- Receiver's or Manager's Abstract of Receipts and Payments.
- Notice of Ceasing to Act as Receiver or Manager.
- Notice of Appointment of Liquidator.
- Liquidator's Statement of Receipts and Payments.
- Return of Final Meeting.

Other documents are occasionally required, according to the circumstances of the Company. A Table showing when documents must be filed and by whom signed is given under **FILING OF DOCUMENTS**, and a complete List of Company Forms appears after the Appendix.

* Not required from a Private Company.

COMPROMISE.

Subject to the sanction of the Court, a majority in number representing three fourths in value of Members or Creditors (or any class of Members or Creditors) may agree to any compromise or arrangement. The majority must be present in person or by proxy at a Meeting of the persons or class of persons affected specially summoned for the purpose of considering the proposals by direction of the Court upon the application of the Company (whether in process of being wound up or not), or of any Member or Creditor. When sanctioned by the Court the compromise or arrangement is binding on all the Members or Creditors (or class of Members or Creditors), as the case may be (Section 120).

An arrangement between a Company about to be or being wound up voluntarily and its Creditors is (subject to the right of appeal within three weeks to the Court) binding on the Company if sanctioned by an Extraordinary Resolution, and on the Creditors if acceded to by three fourths in number and value of the Creditors (Section 191). The Extraordinary Resolution must be printed and registered.

See also CREDITORS and DEBENTURES.

CONSOLIDATION OF SHARES.

If authority is contained in the Articles of Association a Company Limited by Shares may consolidate and divide all or any of its Share Capital into Shares of a larger amount (Section 41). In the absence of such authority the Articles must be altered by Special Resolution, but the power may be exercised by Ordinary, Extraordinary, or Special Resolution, according to the provisions of the Articles as originally drawn or as altered by Special Resolution.

Notice of any Consolidation, on the prescribed Form, must be filed with the Registrar, the fee payable being 5s. (Section 42).

Every copy of the Memorandum of Association issued after the consolidation has been effected must be in accordance with the alteration. If this requirement is not complied with, the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, will be liable to a fine not exceeding £1 for each copy in respect of which default occurs [Section 41 (3)].

A Company Limited by Guarantee and having a Share Capital has no power to consolidate its Shares.

• See also REORGANISATION OF CAPITAL.

CONTRACTS.

Contracts made by a Public Company before it is entitled to commence business do not become binding on the Company until the issue of the Trading Certificate by the Registrar (Section 87).

Any Contract referred to in a Prospectus or Statement in Lieu of Prospectus may only be varied previously to the Statutory Meeting subject to the approval of that Meeting (Section 83).

A Company may empower any person, as its attorney, to execute deeds on its behalf in any place outside the United Kingdom. The authority must be in writing and under the Common Seal. The Company will be bound by any deed signed and sealed by such person on its behalf (Section 78).

Contracts on behalf of a Company may be made as follows :—

- (1) Any Contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the Company in writing under the Common Seal of the Company, and may in the same manner be varied or discharged.

- (2) Any Contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.
- (3) Any Contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the Company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

All such Contracts will be effectual in law, and bind the Company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be (Section 76).

See also ALLOTMENT OF SHARES and PROSPECTUS.

CONTRIBUTORIES.

A "Contributory" is a person liable to contribute to the assets in the event of a Company being wound up. In all proceedings for determining and in all proceedings prior to the final determination of the persons who are Contributories the term includes any person alleged to be a Contributory (Section 124).

In a winding up every present or past Member is liable to contribute to the assets of a Company to an amount sufficient for its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the Contributories among themselves, with the following qualifications:—

- (i) A past Member will not be liable to contribute if he has ceased to be a Member for one year or upwards before the commencement of the winding up.
- (ii) A past Member will not be liable to contribute in respect of any debt or liability of the Company contracted after he ceased to be a Member.

- (iii) A past Member will not be liable to contribute unless it appears to the Court that the existing Members are unable to satisfy the contributions required to be made in pursuance of the Act.
- (iv) In the case of a Company Limited by Shares no contribution may be required from any Member exceeding the amount, if any, unpaid on the Shares in respect of which he is liable as a present or past Member.
- (v) In the case of a Company Limited by Guarantee and not having a Share Capital, no contribution may be required from any Member exceeding the amount undertaken to be contributed by him to the assets of the Company in the event of its being wound up [Section 123 (1)].

Every Member of a Company Limited by Guarantee which has a Share Capital is liable, in addition to the amount of his guarantee, to contribute to the extent of any sums unpaid on any Shares held by him [Section 123 (3)].

A sum due to a Member, in such capacity, by way of Dividends, profits, or otherwise, is not deemed to be a debt of the Company payable to such Member in priority to or coincidently with any debt payable to another creditor who is not a Member. The sum may, however, be taken into account for the purpose of the final adjustment of the rights of the Contributories among themselves [Section 123 (1)].

A Director or other Officer, whether past or present, whose liability is unlimited (*see* p. 83) will be liable—in addition to his liability as an ordinary Member—to make a further contribution as if he were a Member of an Unlimited Company at the commencement of the winding up. But he is not so liable if he ceased to hold office for a year or more before the commencement of the winding up, or for any debts or liabilities contracted after he ceased to be a Director. Subject to any provision in the Articles, he will not be liable unless the Court decides that such a contribution is necessary in order to satisfy

the Company's debts and liabilities and the costs and expenses of winding up [Section 123 (2)].

The liability of a Contributory creates a debt (in England and Ireland in the nature of a specialty, and therefore not Statute barred until twenty years have elapsed) accruing due from him at the time when his liability commenced, but payable at the time when Calls are made for enforcing the liability (Section 125).

In the case of the death of a Contributory his personal representatives, and his heirs and devisees, are liable in a due course of administration to contribute to the assets of the Company. If the personal representatives make default in payment proceedings may be taken for administering the estate and for compelling payment by the estate of any sums due (Section 126).

If the Court, at any time either before or after making a winding-up order, has reason to believe that a Contributory is about to abscond from the United Kingdom or to remove or conceal any of his property in order to evade payment of money due from him in respect of Calls, or of avoiding examination respecting the Company's affairs, it may cause the Contributory to be arrested and his books and papers and moveable personal property seized (Section 176). This power is in addition to any other power of instituting proceedings for the recovery of Calls or other sums (Section 177).

A Contributory is not entitled to present a petition for winding up a Company unless—

- (a) The number of Members of the Company is reduced in the case of a Private Company below two, or in the case of any other Company below seven; or
- (b) Some or all of the Shares in respect of which he is a Contributory either were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months immediately preceding the commencement of the winding up, or have devolved upon him through the death of a former holder [Section 137 (1)].

In a winding up by the Court Meetings of Contributories summoned by the Official Receiver or the Liquidator are presided over by the person convening the Meeting or someone nominated by him. At any other Meeting of Contributories of Companies in compulsory liquidation the Chairman is elected by the Meeting. [Rule 127 of Companies (Winding-Up) Rules, 1909].

See also BANKRUPTS, LIQUIDATOR, and MARRIED WOMEN.

... **CONVERSION OF SHARES INTO STOCK.**

A Company cannot make an original issue of Stock, nor can any partly paid Shares be converted into Stock. But if authority is contained in its Articles a Company Limited by Shares may convert its paid-up Shares into Stock, and reconvert that Stock into paid-up Shares of any denomination [Section 41 (1)]. Notice of such conversion or reconversion, on the prescribed Form, impressed with a fee stamp of 5s., must be forthwith filed with the Registrar (Section 42).

The amount of Stock held by each Member must be shown in the Register of Members and in the Annual Returns filed with the Registrar (Section 43).

Every copy of the Memorandum of Association issued after the conversion has been effected must be in accordance with the alteration. If this requirement is not complied with the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, will be liable to a fine not exceeding £1 for each copy in respect of which the default occurs [Section 41 (3)].

The operation does not need a Special Resolution unless the Articles so direct. If the Articles do not authorise the conversion of Shares into Stock they must be altered by Special Resolution.

A Company Limited by Guarantee having a Capital divided into Shares is not empowered to convert its Shares into Stock.

CREDITORS.

Owing to the facilities enjoyed by Companies for creating Debentures, Mortgages, and Charges being largely taken advantage of when financial difficulties arise, unsecured Creditors frequently discover, when it is too late for the information to be of service, that the assets of the Company indebted to them are heavily charged, leaving little or no margin wherewith to satisfy their claims. It is advisable, therefore, before giving substantial credit to a Company, to examine the documents on the file at the Companies' Registry, and ascertain the amount of the issued Capital, and whether any Debentures or other Charges have been registered, and obtain other particulars relating to the financial position of the Company." (*See SEARCHES AND COPIES OF DOCUMENTS.*)

Creditors have the right to inspect (either personally or by their agent) at the Registered Office copies of Charges requiring registration and the Register of Mortgages. (*See MORTGAGES AND CHARGES and REGISTER OF MORTGAGES AND CHARGES.*)

As to the power of a majority of Creditors to bind the minority by a compromise or arrangement with a Company (whether in liquidation or not) *see* COMPROMISE.

When a Company goes into voluntary liquidation the Liquidator must, within seven days after his appointment, convene a Meeting of Creditors for the purpose of determining whether application should be made to the Court for the appointment of any person as Liquidator in his place or jointly with him, or for the appointment of a Committee of inspection. Any resolution passed at the Meeting must be filed with the Registrar of the Court which would have jurisdiction in the event of the Company being wound up compulsorily. Notice to the Creditors to prove their debts or claims should subsequently be given. Further information in regard to these matters will be found under "LIQUIDATOR."

In the case of a Winding-Up Order the grant of the Order of Court suspends the operation of the Statute of Limitations and permits claims to be proved subsequently to the date when they would in the ordinary course have become barred.*

Any Creditor to whom the Company owes a sum exceeding £50, and who is unable to obtain payment, may petition the Court for a compulsory Winding-Up Order (Sections 129 and 130). If the Company should be already in voluntary liquidation the Creditor's right to have it wound up by the Court will not be debarred thereby if he can show that his rights would be prejudiced by a voluntary winding up (Section 197).

The Liquidator must be careful to ascertain that all the debts of the Company have been discharged before the dissolution of the Company is effected. After dissolution he will be personally liable in respect of any claim wilfully or negligently ignored by him.†

Meetings of Creditors summoned by the Liquidator or the Official Receiver are presided over by the person convening the Meeting or someone nominated by him. At other Meetings of Creditors the Chairman is elected by the Meeting [Rule 127 of Companies (Winding-Up) Rules, 1909, and Rule 149A].

. See also LIQUIDATOR, PREFERENTIAL PAYMENTS, and WINDING UP.

DEBENTURES.

There is no legal definition of the expression "Debenture." A certificate or document signed by a duly authorised officer as an acknowledgment of a debt due may be regarded as a Debenture; but as generally understood a Debenture is an instrument executed under the Seal of a Company charging the whole or a portion of its

* *Re General Rolling Stock Co., Joint Stock Discount Companies' Chim*, [1866] L. R. 7 Ch. 646.

† *Argylls, Limited v. Coxeter*, [1913] 29 T. L. R. 355.

C. L.

undertaking in favour of the holder to secure a certain sum, and providing for the payment of interest at a specified rate until repayment of the principal. The Charge may be contained in the Debenture itself or in a Deed, to the benefit whereof the holder is declared to be entitled, or each instrument may contain a Charge independently of the other. Debentures are usually made to form part of a series of a specified number, each for securing a like sum and all being expressed to rank *pari passu* in point of charge.

The amount secured may be made payable to the registered holder or to bearer: in the former case the Debentures can only be transferred by duly stamped instruments; in the latter case the instruments are capable of passing by delivery and are negotiable: *i.e.* the transferee who takes the instrument *bona fide* and for value gets a good title free from any defects in the title of the transferor or previous holder.* The Charge may be either "fixed" or "floating," or a combination of the two. A fixed charge is frequently given on freehold property or other assets of a permanent nature with the object of preventing the Company from disposing of such property and thus depreciating the value of the Debenture-holders' security, but any assets subject to a floating charge may be sold, mortgaged, or otherwise dealt with by the Company as may be necessary.† Stock-in-trade and other assets which fluctuate from day to day should, of course, only be subjected to a floating charge (*see* p. 73). No Charge can be created upon the books required to be kept by the Company at its Registered Office in compliance with the provisions of the Companies Acts.‡

If a Company determines by Special Resolution that any portion of its uncalled Share Capital shall only be

* *Edelstein v. Schuler & Co.*, [1902] 2 K.B. 144.

† *Re Vivian & Co.*, [1900] 2 Ch. 654.

‡ *Anglo-Maltese Hydraulic Dock Co.*, [1885] 54 L. J. Ch. 730.

called up in the event and for the purposes of the Company being wound up, the Company has no power to create any charge upon the portion of its Capital so reserved.*

Debentures of a series containing any Charge as defined by Sub-section 1 of Section 93 (*see* MORTGAGES AND CHARGES) require registration within twenty-one days after the first execution of any of the instruments, or, if secured by a Trust Deed, within twenty-one days after the execution of the Deed. If not registered the instruments will, "so far as any security on the Company's property or undertaking is thereby conferred, be void against the Liquidator and any Creditor of the Company."

The words in inverted commas, which are taken from Section 93 of The Companies (Consolidation) Act, 1908, do not have the effect of rendering the Debentures void to all intents and purposes, but only "void against a creditor who has a registered charge on the Company's property and the liquidator in the event of winding up."† Accordingly the instruments will be good against the Company so long as it is a going concern, or against purchasers from the Company, but not against a creditor who has a registered charge (or, presumably, against a creditor who has a charge outside the scope of the section and therefore unregistered, or against a creditor without a charge who has obtained judgment against the Company and levied execution). If Debentures are not registered within the prescribed period the money secured immediately becomes payable, and the Company and every Director, Manager, Secretary, or other person who is knowingly a party to the default in registering the instruments will be liable to a fine of £50 a day during the continuance of the default (Section 99).

* *Bartlett v. Mayfair Property Company*, [1898] 2 Ch 28.

† *Tacon v. Monolithic Building Co.*, [1913] 1 Ch 543.

When there has been default in registration, an Order of Court extending the time for registration may be obtained on good grounds being shown (Section 96). Usually the Order is made without prejudice to any rights acquired prior to the time when registration is actually effected.

An Agreement to issue Debentures to secure moneys already advanced, if expressed to create a present equitable charge, must be registered, or it will be void against the Liquidator and any creditor of the Company. Moreover, the Debentures subsequently issued pursuant to the Agreement will require registration in order to secure the holder, as the Agreement is superseded by the Debentures.* Where such an Agreement confers no present charge the Debentures issued pursuant thereto may be rendered invalid under Section 212 in the event of the Company passing a resolution for winding up within three months after such issue.†

Every Prospectus issued by or on behalf of a Company, or by or on behalf of any person who is or has been engaged or interested in the formation of the Company, must state the number and amount of the Debentures or Debenture Stock issued or agreed to be issued during the two immediately preceding years as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up; and the consideration must also be stated in either case [Section 81 (1)].

In order to effect registration of a series of Debentures, Particulars of the Charge on the prescribed Form have to be produced to the Registrar, duly stamped. These Particulars must give the total amount secured; the amount of the first issue; the dates of the Resolutions authorising the issue of the Series; the date of the covering Deed (if any) by which the security is created,

* *Columbia Fireproofing Co.*, [1910] 2 Ch. 120.
 † *Gregory, Love & Co.*, [1916] 1 Ch. 203; 85 L. J. Ch. 241.

or if there is no such Deed the date of the execution of the Debentures; a general description of the property charged; the names of the Trustees (if any) for the Debenture Holders, and the amount or rate per cent. of any commission, allowance, or discount paid or made by the Company. They must be accompanied by the Trust Deed securing the issue, or, if there is no such Deed, by one of the Debentures. The fee payable is £1, unless the amount of the series is £200 or less, when only 10s. is required (Order of Board of Trade dated the 29th March, 1909).

Where there is more than one issue of Debentures in the series, Particulars of the date and amount of each issue after the original registration, impressed with a fee stamp of 5s., must be filed. Failure to comply with this requirement will not affect the validity of the charge, but liability to a fine of £50 will be incurred [Sections 93 (3) and 99].

If any commission, allowance, or discount has been paid or made by the Company, either directly or indirectly, to any person in consideration of his subscribing or agreeing to subscribe or procuring or agreeing to procure any persons to subscribe for its Debentures, the fact must be disclosed in the Particulars. Should the information not be given a fine of £100 may be imposed, but the validity of the Debentures will not be affected (Section 99). The deposit of any Debentures as security for a debt of the Company is not deemed to be an issue at a discount [Section 93 (4)].

The amount of any commission paid or payable must also, in the case of a Public Company, be stated in the Prospectus or Statement in Lieu of Prospectus; and each Annual Return (whether the Company be a Public or Private one) must disclose the amount of any commission paid or discount allowed since the date of the last preceding Return [Sections 26 (2), 81, and 82].

Upon the registration of any Debenture, Mortgage, or other Charge the Registrar hands the instrument back accompanied by his Certificate, which is conclusive evidence that the requirements as to registration have been complied with [Section 93 (5)].

A copy of the Certificate of Registration must be endorsed by the Company on every Debenture or Certificate of Debenture Stock which is issued, and the payment of which is secured by the registered Mortgage or Charge, unless the Instrument was created after the issue of the Debenture or Stock Certificate [Section 93 (6)]. Any person knowingly and wilfully authorising the delivery of any Debenture or the Certificate of any Debenture Stock without a copy of the Certificate of Registration being endorsed thereon, will, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding £100 [Section 99 (3)].

Any person unlawfully engraving or printing Debentures or Certificates of Debenture Stock is liable on conviction to a term of penal servitude not exceeding seven years (Forgery Act, 1913, Section 9). (*See also under FORGERY, PERSONATION, &c.*)

Debentures created by Companies incorporated in Scotland do not need registration at the Companies Registry, nor is there any obligation on any Company (whether English, Scotch, or Irish) to keep a Register of Debenture Holders.

In practice, however, such Registers of Debenture Holders are frequently kept, although not required by Statute. If such a Register is kept it must be open to inspection by the registered holder of any Debentures and any member, but the Company in General Meeting may impose such reasonable restrictions as may be thought fit, provided that at least two hours in each day are appointed for inspection. Any person who is a Debenture Holder or a member may require a copy of the Register, or any part thereof, on payment of 6d. for

every 100 words required to be copied [Section 102 (1)]. If inspection of the Register is refused, or a copy thereof is refused or not forwarded, the Company will be liable to a fine not exceeding £5, and to a further fine not exceeding £2 for every day during which the refusal continues. Every Director, Manager, Secretary, or other Officer of the Company who knowingly authorises or permits the refusal will also incur the like penalty [Section 102 (3)]. A Company has power to close its Register during such period or periods, not exceeding in the whole thirty days in any year, as may be specified in the Articles. [See Section 102 (1).]

If the Debentures specifically affect any property of the Company, a Register of Mortgages and Charges must also be kept [Section 100 (1)]. This Register and a copy of a Debenture or of the trust deed (if any) must be open at all reasonable times to the inspection of any Creditor or Member without fee. Any other person is entitled to inspect the Register on payment of a fee not exceeding 1s. [Sections 93 (9) and 101 (1)].

A Company which has redeemed any Debentures has power to keep them alive for the purpose of reissue, unless the Articles or the conditions of issue expressly otherwise provide, or unless the Debentures have been redeemed in pursuance of any obligation on the Company so to do (not being an obligation enforceable only by the person to whom the redeemed Debentures were issued or his assigns). Where a Company has purported to exercise such a power, *e.g.* by the passing of a Resolution at the time of redemption, the Debentures may be reissued or other Debentures may be issued in their place. The holders of any reissued Debentures have the same rights and priorities as if the instruments had not previously been issued. If, with the object of keeping Debentures alive for the purpose of reissue they have been transferred to a nominee of the Company a transfer from that nominee will be deemed to be a reissue [Section 104 (1) and (2)].

Companies frequently deposit Debentures to secure advances on current account or otherwise. In such cases the Debentures will not be deemed to have been redeemed merely because the Company's account has ceased to be in debit while the Debentures were deposited [Section 104 (3)].

The reissue of a Debenture or the issue of another one in its place, is regarded as the issue of a new instrument for the purpose of stamp duty, but not for the purpose of any provision limiting the amount or number of Debentures to be issued [Section 104 (4)]. A person lending money on the security of a reissued Debenture which appears to be duly stamped may give the Debenture in evidence in proceedings to enforce his security without paying the stamp duty or any penalty, unless he had notice, or but for his negligence might have discovered, that the instrument was not duly stamped. In any such case of inadequate payment of stamp duty the Company is liable to pay the proper duty and penalty [Section 104 (4)].

The original registration protects the reissued Debentures, and no Memorandum of Satisfaction should be filed upon the redemption of Debentures which it is intended to keep alive for the purpose of reissue.

A condition contained in any Debentures, or in a trust deed for securing Debentures, is not invalid by reason only that thereby the Debentures are made irredeemable or redeemable only in the event of a remote contingency, or on the expiration of a period, however long (Section 103).

Irredeemable Debentures in effect confer perpetual annuities on the holders, and where the issue of such instruments is contemplated specific power should be taken in the Memorandum of Association.*

A contract with a Company to take up and pay for Debentures may be enforced by an order for specific performance (Section 105).

* Southern Brazilian Rio Grande do Sul Railway, [1905] 2 Ch. 78

Debentures to Bearer issued in Scotland are declared by Section 106 to be valid and binding according to their terms, notwithstanding the provisions of the Statute of the Scots Parliament of 1696; c. 25.*

Where, in the case of a Company being wound up, a floating charge on its undertaking or property was created within three months of the commencement of the winding up regard must be had to the provisions of Section 212. That section declares that such a charge will—unless it is proved that the Company immediately after the creation was solvent—be invalid, except to the amount of any cash paid to the Company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per centum per annum.

Debentures, Mortgages, and other Securities for money which are transferable only by instrument of transfer are chargeable under The Stamp Act, 1891, with duty according to the following scale:—

			s.	d.
Where the amount secured does not exceed £10	...	...	0	3
Exceeds £10 and does not exceed £25	...	...	0	8
“ £25 “ “ £50	...	...	1	3
“ £50 “ “ £100	...	...	2	6
“ £100 “ “ £150	...	...	3	9
“ £150 “ “ £200	...	...	5	0
“ £200 “ “ £250	...	...	6	3
“ £250 “ “ £300	...	...	7	6
“ £300, for every £100, and also for any fractional part of £100	...	...	2	6

The “amount secured” includes any bonus or premium which the Company covenants to pay on redemption in an event not dependent on the volition of the Company. For example, a Debenture for £100 redeemable at £105 must be stamped with the duty of 3s. 9d.; but if redeemable at a fixed date at par, with an option to the Company to redeem earlier at a premium, the duty is 2s. 6d.

* The Blank Bonds and Trust Act, 1696, which prescribes that any bond delivered in blank shall be regarded as void.

An instrument which is a collateral, auxiliary, additional, or substituted security (other than an Equitable Mortgage), or which is issued by way of further assurance, requires stamping with duty at the rate of 6d. for every £100, or part of £100, of the amount secured, until the maximum duty of 10s. is reached (Revenue Act, 1903, Section 7).

Where the Debentures, Bonds, or other Securities are payable to Bearer, or transferable otherwise than by an instrument of transfer, the stamp duty is at the rate of 4s. for every £10, or fractional part of £10, of the money secured; and where such Securities are given in substitution *for like Securities* duly stamped in conformity with the law in force at the time when the last-mentioned Securities became subject to duty, the rate of duty payable on the substituted Securities is 2s. for every £20, or fractional part of £20, of the money secured [Stamp Act, 1891, Schedule; Finance (1909-10) Act, 1910, Section 76; and Finance Act, 1920, Section 38]. But any Security transferable by delivery issued in lieu of a Security transferable only by an instrument of transfer is chargeable with the higher rate of duty.

In the case of substituted Securities of any description chargeable with a reduced rate of duty, the duty can only be impressed thereon upon presentation at the Chief Stamp Office in London of both the original and substituted Securities at a date prior to the expiration of the original Securities. When registered Securities have changed hands, the instruments of transfer must be produced for inspection. In addition to being impressed with the duty the substituted Securities are denoted with "Duty Paid" stamps indicating the rate of duty paid on the originals.

When Debentures repayable at a fixed date are renewed by endorsement during the currency thereof, the memorandum or instrument of renewal, if under

hand only, is liable to the duty of 6d. (which must be paid within fourteen days, the stamp being impressed or adhesive), or, if under seal, is liable to duty at the rate of 6d. for every £100 or part of £100 of the amount secured (with a maximum of 10s.). If the renewal is effected after maturity the authorities contend that (unless it can be shown that negotiations for the renewal were entered into prior to maturity) the instrument is chargeable as a new security, whether it be under hand or seal; but it is submitted that such contention should be opposed on the ground that no new security is in fact created.

The foregoing duties (with the exception mentioned in the preceding paragraph) must be impressed on the instruments within thirty days after execution, unless the execution took place abroad, in which case thirty days are allowed after the first receipt of the document in the United Kingdom.

Coupons for Interest, whether issued with the Debentures or subsequently in a sheet, are not chargeable with duty (Finance Act, 1894, Section 40).

Upon a Receiver or Manager being appointed Notice thereof must be filed with the Registrar within seven days. (See RECEIVER OR MANAGER.)

See also BORROWING, MORTGAGES AND CHARGES, PREFERENTIAL PAYMENTS, REGISTER OF MORTGAGES AND CHARGES, and TRUST DEEDS.

DEFUNCT COMPANIES.

Where the Registrar has reasonable cause to believe that a Company is not carrying on business or in operation, he has power, after making inquiry and notifying his intention in the *Gazette*, to strike the name off the Register. If the Company or any Member or Creditor thereof feels aggrieved by the Registrar's action, the Court may, on application, order the name to be restored to the Register, if satisfied that the Company

was carrying on business or in operation at the time of the striking off, or otherwise that it is just that the name be restored. The Company will thereupon be deemed to have continued in existence as if its name had not been struck off (Section 242).

The Registrar has similar power in winding up cases where he has reasonable cause to believe that no Liquidator is acting, or that the affairs of the Company are fully wound up, if no Returns by the Liquidator have been filed for a period of six consecutive months after notice has been given by the Registrar to the Company or the Liquidator [Section 242 (4)].

Many Companies in default in registering their Annual Returns or other documents have had their names removed from the Register, although carrying on business, with the result that applications to the Court have been necessary.

If the Registrar has reason to believe that the Company has had any assets, he usually inquires as to their disposal before exercising the power conferred on him.

Before striking a name off the Register the Registrar sends the Company notice by post in order to afford it an opportunity of showing cause why the name should not be removed. The notice is addressed to the Company at its Registered Office, or if no Office has been registered to the care of some Director or Officer, or, if there is no such person whose address is known, to each of the Subscribers to the Memorandum of Association [Section 242 (7)].

The removal of a Company's name from the Register does not relieve Directors, Managing Officers, or Members of any liability they may have incurred, for the Act expressly declares that such liability shall continue and may be enforced after the removal [Section 242 (5)]. It is therefore advisable, whenever possible, to wind up Companies in a regular manner by passing the requisite Resolution.

DIRECTORS.

The Directors are the persons whose duty it is to conduct the business of the Company. They may carry on the business in any manner they think fit, subject to any restrictions contained in the Memorandum or Articles or the Statutes; and it is to be observed that powers vested in the Directors by the Articles cannot be performed by the Shareholders unless the Articles are altered and the powers of the Directors thereby curtailed.* Their powers cease on the appointment of a Liquidator, except so far as the Company in General Meeting or the Liquidator may sanction the continuance of such powers (Section 186).

The following useful observations as to the duties of Directors have been made by Neville, J.†: "A Director's duty has been laid down as requiring him to act with such care as is reasonably to be expected from him, having regard to his knowledge and experience. He is, I think, not bound to bring any special qualifications to his office. . . . He is not, I think, bound to take any definite part in the conduct of the Company's business; but, so far as he does undertake it, he must use reasonable care in its dispatch. Such reasonable care must, I think, be measured by the care an ordinary man might be expected to take in the same circumstances on his own behalf. He is clearly, I think, not responsible for damages occasioned by errors of judgment."

Every Company registered after the 22nd November, 1916, and every foreign Company‡ which since that date has established a place of business in the United Kingdom, is required to have mentioned in legible characters the name of every Director in all trade catalogues, trade

* *Automatic Self-Cleansing Filter Syndicate v. Cunningham*, [1906] 2 Ch. 34.
 † *Quin & Axtens v. Salmon*, [1906] App. Ca. 442.

‡ *Re Brazilian Rubber Plantations and Estates*, [1911] 1 Ch. 425 at p. 437.

‡ As to Foreign and Colonial Companies see also p. 103

circulars, showcards, and business letters in which the name* of the Company appears and which are issued or sent out to any person in any part of His Majesty's Dominions [The Companies (Particulars as to Directors) Act, 1917, Section 2 (2), and The Registration of Business Names Act, 1916, Section 18 (1)].

In the term "Director" is included any person† occupying the position of Director by whatever name he may be called (Sections 274 and 285). But regard must be had to the extension of this meaning contained in Section 3 of The Companies (Particulars as to Directors) Act, 1917, for the purposes of that Act and of Sections 26, 75, and 274 of the Companies Act, whereby "any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act" is also included in the term.

If any person whose name is so required to be published has at any time (subject to the exceptions stated later) changed either his Christian name or surname, by addition thereto or otherwise, his former names must be shown, and if he is not of British nationality his nationality must be stated. If his nationality (whether British or otherwise) is an acquired one his nationality of origin must be shown.

Relief from the obligation so to publish the names of Directors may be granted by the Board of Trade (subject to any conditions that the Board may think fit to impose) where special circumstances exist which, in the opinion of the Board, render it expedient to do so.

It should be noted that the requirement to record in the Register of Directors (*see* p. 198) and in the Company's Annual Return (*see* p. 12) the further particulars prescribed by the 1917 Act applies to all

* *See* p. 158 and Section 63 (1) (c) of the Companies Act.

† Section 19 of The Interpretation Act, 1889, provides that the expression "person" shall, unless the contrary intention appears, "include any body of persons corporate or unincorporate."

Companies, but the obligation to publish the names and particulars above set out concerning Directors on business letters &c. is only imposed on Companies which have been registered or which have established a place of business in the United Kingdom since the 22nd November, 1916.

A change of name is not required to be disclosed where, in the case of a natural-born British subject, the Christian name or surname was changed or disused or an additional name was taken before the person attained the age of eighteen years; where, in the case of a woman, her name was changed in consequence of her marriage; or where in the case of a peer or a person usually known by a British title different from his surname he adopts or succeeds to the title.

If default is made in publishing the particulars respecting the Directors of a Company to which this provision applies every Director, Secretary, and officer of the Company who is knowingly a party to the default is liable on summary conviction for each offence to a fine not exceeding Five Pounds; but no proceedings in respect of such default may be instituted except by or with the consent of the Board of Trade.

Subject to the statutory restrictions hereinafter mentioned the Directors are appointed in accordance with the provisions of the Articles of Association, and the scope of their actions is also governed by the Articles. They are agents of the Company (though they are more than this in several ways), and as agents are not personally liable in respect of contracts made by the Company, unless in accepting the terms of a contract they are acting beyond the powers delegated to them by the Company. Any action by the Directors in excess of their powers can, however, be ratified by the Company in General Meeting to any extent within its own powers.

A person may not be appointed a Director by the Articles of a Public Company or be named as a Director

or proposed Director in any Prospectus issued by or on behalf of the Company within one year after the date on which it is entitled to commence business, or in any Statement in Lieu of Prospectus filed by or on behalf of the Company, unless he himself, or his agent authorised in writing, has (a) signed and filed with the Registrar a Consent in writing to act as such Director, and (b) either signed the Memorandum for his qualification Shares (if any), or signed and filed a Contract to take from the Company and pay for such Shares. The Consent and Contract must be filed before the registration of the Articles or the publication of the Prospectus, or the filing of the Statement, as the case may be [Section 72 (1)].

On the registration of a Public Company a List of the persons who have consented to be Directors must be filed. If the List, which must be signed by the applicant for the registration of the Company, contains the name of any person who has not so consented the applicant will be liable to a fine not exceeding £50 [Section 72 (2)].

These provisions do not apply to Private Companies or to Prospectuses issued by or on behalf of Companies after the expiration of one year from the date at which they are entitled to commence business [Section 72 (3)].

The names, addresses, and descriptions of the Directors, with particulars as to their interest, qualification, and remuneration, must be stated in any Prospectus issued by a Company within one year after the date on which it is entitled to commence business (Section 81).

Usually the first Directors are named in the Articles or it is thereby provided that they be appointed by a majority of the Subscribers of the Memorandum of Association. Directors hold office for such period and upon such terms as may be prescribed by the Articles, or if no provision is made therein as may be agreed at the time of the election. A common form of Article prescribes

that one third of the Directors shall retire each year, those retiring to be eligible for re-election. Articles also usually provide for the removal and resignation of Directors.

On vacancies occurring in the Directorate owing to death, resignation, or other cause, they must be filled in accordance with the Articles, unless it is determined to reduce the number of Directors. Care must be taken that the number does not fall below the minimum prescribed by the Articles.

Every Company is required to keep at its Registered Office a Register containing the names, places of residence, nationality, and occupations of its Directors or Managers, and where, either, the name or nationality has been changed the original must be recorded, and a copy of the Register has to be filed within one month after incorporation. Upon any change taking place in the above particulars respecting the Directors it must be entered up in the Register, and a copy of the Register, showing the alteration, filed forthwith. In case of default the Company, and every Director and Manager knowingly and wilfully authorising or permitting the same, will be liable to a fine not exceeding £5 a day [Section 75, as amended by The Companies (Particulars as to Directors) Act, 1917]. *See under REGISTER OF DIRECTORS.*

The Annual Return of Capital and Members also must contain the like particulars [Section 26 (2), as amended by Section 1 of The Companies (Particulars as to Directors) Act, 1917]. *See under ANNUAL RETURN.*

A Company which is a Member of another Company may, by resolution of the Directors, authorise any of its officials or any other person to act as its representative at any Meeting of the latter Company. Such a person is entitled to exercise the same powers on behalf of his Company as if he were an individual Shareholder of the

other Company (Section 68). A Company incorporated outside the United Kingdom cannot, however, take advantage of these provisions.*

In a winding up by the Court a Director may be examined, either privately or publicly, as to the conduct of the Company's business (Sections 174 and 175):

DIRECTORS' LIABILITY.

Directors are responsible for statements contained in Prospectuses issued by them (Section 84). They are, moreover, liable to repay moneys which they have misapplied, *e.g.* in paying a dividend out of Capital, even though they may have acted honestly†; but they are not liable for losses occasioned through errors of judgment. Secret profits must be refunded by them. They are liable if they keep fraudulent accounts, publish fraudulent returns, or make false statements, or are parties to default in filing various returns under the Companies Acts, and are also in certain cases liable for any loss sustained by the Company or by the allottees owing to irregular allotments (*see* p. 146). If the Company carries on any business outside the scope of the powers contained in its Memorandum, the Directors may be held personally liable.‡

The liability of the Directors or Managers or Managing Director may be unlimited if the Memorandum of Association so provides [Section 60 (1)]. In cases of the kind (which are very rare) the Directors, and the Member who proposes a person for election as Director or Manager, must add to the proposal a statement that the liability of the person holding the office will be unlimited. A written

* *Blair Open Hearth Furnace Company v Reigart*, [1913] 168 L. T. 665.

† *Masonic and General Life Assurance Co v Sharpe*, [1892] 1 Ch. 154, per Lindley, L.J., at pp. 165, 166.

‡ *Cullerne v London and Suburban General Building Society*, [1890] 25 Q. B. 485 at p. 490.

notification to that effect must also be given the proposed Director by the Directors, Managers, Promoters, and Secretary, or one of them [Section 60 (2)]. If such notification is not given the person elected will not thereby be relieved of liability, but those responsible for the default will be liable to a fine of £100, and also to compensate him for any damages he may sustain through their neglect [Section 60 (3)].

A Limited Company, if authorised by its Articles, may alter its Memorandum in order to make the liability of all or any of the Directors unlimited, and upon the confirmation of the Special Resolution its provisions are as binding as if they had been originally contained in the Memorandum (Section 61). It would seem, therefore, that such a Resolution cannot be rescinded. Every copy of the Memorandum issued subsequently must have a copy of the Resolution annexed thereto or the Resolution embodied therein, the fine for default being £1 in respect of each copy issued without this provision being complied with (Section 61).

Directors must observe good faith towards the Shareholders, and if they improperly obtain benefit for themselves they cannot retain it.*

If in any proceeding against a Director, or person occupying the position of Director, of a Company for negligence or breach of trust it appears that he is liable, but has acted reasonably and honourably, the Court may relieve him from his liability (Section 279).

A Director guilty of misfeasance or breach of trust may be examined during the liquidation of the Company, and be compelled to repay or restore any money or property, with interest at a rate determined by the Court,

* *Imperial Mercantile Credit Association v Coleman*, [1873] L. R. 6 H. L. 189

or to make compensation by contributing to the assets of the Company (Section 215). Delinquent Directors may also be prosecuted (Section 217),

If a Director has incurred liability for misapplication of the Company's money he can recover contribution from his co-Directors who are liable; and this liability to contribution is not ended by death or bankruptcy of the defendant from whom contribution is demanded.*

DIRECTORS' MEETINGS.

The Directors should meet as often as they think necessary, the Meetings being convened in accordance with the Articles of Association. Notice of each Meeting must be given to each Director, but the notice may be verbal and the nature of the business to be dealt with need not be stated.† The Chairman of the Board should preside, but if he should be absent or no person have been appointed to the office one of the Directors present must be elected. It is usual for the Articles to confer on the Chairman the right to a second or casting vote in the case of an equality of votes, but at Common Law he has no such right.‡

A quorum of Directors must be present at all Board Meetings to enable business to be done. (*See QUORUM.*)

Powers conferred upon the Board by the Company cannot be delegated to any other person or body of persons in the absence of specific authority in the Articles of Association.§ Frequently the Articles empower the Directors to appoint a Committee for the purpose of carrying through and reporting upon any special matter. A Committee may consist of one Director.||

* *Ramskill v. Edwards*, [1886] 31 Ch D. 100.

† *La Compagnie de Mayville v. Whitley*, [1896] 1 Ch. 788.

‡ *Nell v. Longbottom*, [1894] 1 Q. B. 767.

§ *Leeds Banking Company, Howard's Case*, [1866] L. R. 1 Ch. 561.

|| *Taurine Company*, [1884] 25 Ch. D. 118.

Articles sometimes provide that a Resolution signed by all the Directors shall have the same effect as a Resolution of the Board. It is not, however, advisable to take advantage of such a provision unless circumstances render it impossible to arrange a Meeting, as a decision arrived at after an opportunity for discussion has been afforded will probably be more satisfactory than one agreed to by the Directors individually. It has been held that, in the absence of such a provision, Directors can only transact business at Meetings duly convened.*

Minutes of the Meetings must be kept, but the Directors' Minute Book should not be open to inspection by Members. Any such Minutes—if purporting to be signed by the Chairman of the Meeting at which the proceedings were had, or by the Chairman of the next succeeding Meeting—are evidence of the proceedings. Until the contrary is proved, all Meetings whereof Minutes have been so made are deemed to have been duly held and convened, and all proceedings thereat valid (Section 71).

DIRECTORS' QUALIFICATION AND DISQUALIFICATION.

There is no statutory provision that Directors shall have a Share qualification; but the Articles almost invariably require them to hold a specified number of Shares of the Company. Table A of 1862 does not impose any qualification, but the Tables of 1906 and 1908 require a Director to hold at least one Share. As a general principle, however, a Director's interest should be more than a nominal one and a more or less substantial qualification; according to his responsibilities, is to be recommended..

* *Haycraft Gold Reduction Co.*, [1900] 2 Ch. 230; and the view was expressed by Fry, L. J., in *1st Portuguese Consolidated Copper Mines*, [1889] 42 Ch. D. 160, that without meeting together Directors "cannot think."

Every Director of a Company (whether Public or Private) who is by the Articles required to hold a specified number of Shares, and who is not already qualified, must obtain his qualification within two months after his appointment, or within such shorter time as may be fixed by the Articles (Section 73). If a Director is not qualified within such period, or if he subsequently ceases to hold his qualification, his office is vacated. Such a person will, moreover, be incapable of being reappointed a Director until he holds the requisite number of Shares. A Director may hold his qualification Shares jointly with some other person unless the Articles require him to be the sole Holder. Shares which are shown in the Register of Members to be held by a Director in the capacity of executor will also suffice for his qualification, unless (as is frequently the case) the Articles prescribe that the holding is to be "in his own right."* The holding of Share Warrants will not, however, be a good qualification [Section 37 (4)]. If any unqualified person acts as a Director after the time allowed for qualification has elapsed he will be liable on conviction to a fine not exceeding £5 for every day between the expiration of such time and the last day on which it is proved that he acted as a Director (Section 73).

A person cannot be appointed a Director of a Public Company by the Articles, or be named as a Director or proposed Director of a Public Company in any Prospectus issued by or on behalf of the Company within one year after the date on which it is entitled to commence business, or in any Statement in Lieu of Prospectus filed by or on behalf of the Company, unless before the registration of the Articles or the publication of the Prospectus or the filing of the Statement in Lieu of Prospectus he has, by himself or by his agent duly authorised in writing, either signed the Memorandum of

* *Grundý v. Briggs*, [1910] 1 Ch. 444.

Association for his qualification Shares (if any) or signed and filed a contract in writing to take from the Company and pay for such Shares (Section 72). Although the Shares constituting the qualification of original Directors of a Public Company must be taken direct from the Company, Directors subsequently appointed, or Directors of a Private Company, are under no such obligation, and their qualification Shares may be acquired in any proper manner, the only obligation being that they shall be acquired within the time directed by the Statute or the shorter period (if any) fixed by the Company's Articles.

Directors should carefully observe the provisions of the "Disqualification Clause" in the Articles, which usually renders the office vacant if a Director holds any other office or place of profit under the Company; if he becomes bankrupt or insolvent or compounds with his creditors; if he becomes of unsound mind; if he is convicted of an indictable offence; if he absents himself from Meetings of Directors for six months or other period without the consent of his co-Directors; or if he gives the Directors notice in writing that he resigns his office.

The acts of a Director or Manager are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification (Section 74).

DIRECTORS' REMUNERATION.

The Articles usually prescribe the remuneration that Directors are to receive. If no provision is so made they will not be entitled (unless it has been determined by Agreement between the Directors and the Company) to any remuneration as of right, but the Company in General Meeting may vote such amount as it thinks fit. The amount prescribed or voted is payable whether profits are earned or not, unless the remuneration is

by way of commission upon the profits or expressly declared to be payable only out of profits. On a winding up, the Directors may prove against the Company as creditors for their remuneration, unless it be merely a gratuity. A person invalidly appointed to the office of Director is not entitled to any remuneration for his services as Director, and a Company may recover from a Director any fees paid to him in error in respect of a period during which he was disqualified, although his acts are deemed to be valid.*

Unless expressly authorised by the Articles or by a Resolution of the Company in General Meeting, the Directors are not entitled to be repaid travelling and hotel expenses incurred in attending Board Meetings in addition to their remuneration,† nor may income tax on the sums received by them be paid out of the assets.‡ Where the Articles determine the remuneration, and the Directors have voted themselves a sum in excess of that amount, the Company cannot ratify the irregularity without first altering the Articles by Special Resolution.

It has been held that where the remuneration is fixed at a certain sum per annum a Director who has not served for an entire year is not entitled to any payment.§ From a recent judgment|| it would, however, appear doubtful whether such decision can now be relied upon or whether the remuneration is apportionable. Certainly if the remuneration is at a specified *rate* a Director who has served for part of a year is entitled to a proportionate sum.¶

* *Re Bodega Co.*, [1904] 1 Ch. 176.

† *Young v. Naval, Military and Civil Service Co-operative Society of South Africa*, [1905] 1 K. B. 687.

‡ *Boschoek Proprietary Company v. Fuke*, [1906] 1 Ch. 148.

§ *Innaq v. Ackroyd* [1901] 1 K. B. 613.

|| *Moriarty v. Regent's Garage Co.*, [1921] 2 K. B. at p. 709.

¶ *Salton v. New Beeston Cycle Co.*, [1899] 1 Ch. at p. 779.

Frequently the Articles fix the amount payable by way of remuneration to the Directors, and leave them to determine the proportions into which such amount shall be divided. In such cases no Director can sue the Company for his remuneration until the Board of Directors have determined the proportions.*

DIVIDENDS.

The net profits made by a Company are distributable in the form of Dividends to the Shareholders in accordance with the Articles. Before the Profits are ascertained a reasonable sum should be written off for depreciation on plant and machinery, stock, and other assets which diminish in value in the course of time owing to wear and tear and other causes.

Before recommending a Dividend the Directors usually set aside a certain sum as a reserve, and even if there is no provision in the Articles for the creation of a Reserve Fund it is not necessary for the whole of the Profits to be distributed.† No prudent Board will fail to accumulate a Reserve wherever possible, as such a fund may prove of great value during periods of trade depression or in the event of unexpected losses occurring, or when Capital is needed for an extension of the business. Articles generally provide that any sum standing to the credit of the Reserve Fund shall be applicable for meeting contingencies or equalising Dividends, or for any other purpose to which the Profits may be properly applied.

Dividends are usually payable on the amount paid up on the Shares (see Clause 98 of Table A of 1908); but where it is declared that Dividends shall be paid to the Members "in proportion to their Shares" (see, for example, Clause 72 of Table A of 1862), they must be

* *Joseph v. Sonora (Mexico) Land Co.*, [1918] 34 T. L. R. 220.

† *Burland v. Earle*, [1902] App. Ca. 83, 95.

paid in proportion to the nominal amount of the Shares irrespective of the amount paid up.* If the Capital is divided into Shares of different classes—such as Preference, Ordinary, and Deferred—strict regard must be had to the rights attached to each class.

If the result of the trading is satisfactory, the Directors usually recommend at the Annual Meeting that a Dividend at a specified rate be paid to the Shareholders. The recommendation is almost invariably approved, seeing that Shareholders are rarely inclined to reduce the amount (even where prudence might dictate such a course), and under the common form of Articles they are forbidden to declare a larger Dividend. The Directors may pay interim Dividends according to their discretion if the Articles authorise them to do so, but they should assure themselves first that the financial position of the Company thoroughly justifies their so doing.

The declaration of a Dividend creates a specialty debt from the Company to the Shareholder, which is not Statute barred for twenty years.†

Dividends are almost invariably paid in cash, but they may be satisfied by the distribution of specific assets among the Members of the Company if the Articles contain the requisite authority.‡ The assets so utilised are generally shares or securities of other companies, but in very exceptional cases goods in which the Company deals have been distributed.

The rule is to deduct Income Tax from Dividends, although they are paid by some Companies "free of tax." It is immaterial which course is adopted where there is only one class of Shares, but if there are several classes and any class carries the right to a fixed Dividend in

* *Galkbank Oil Company v. Crum*, [1883] 8 App. Ca. 65.

† *Artisans Land & Mortgage Corporation*, [1904] 1 Ch. 796

‡ *Wood v. Odessa Waterworks Company*, [1889] 42 Ch. D. 636, 645.

priority to other classes the tax must be deducted from such fixed Dividend, as, if this were not done, the effect would be to deprive the Holders of Shares of the other classes of a proportion of the profits due to them.*

Where Dividends are declared to be paid "free of tax" the Warrant or cheque in payment of the Dividend must have annexed thereto or be accompanied by a Statement showing the particulars specified in Section 33 of The Finance Act, 1924: *i.e.*—

- (a) The gross amount which after deduction of the Income Tax appropriate thereto corresponds to the net amount actually paid; and
- (b) The rate and the amount of Income Tax appropriate to such gross amount; and
- (c) The net amount actually paid.

Failure to comply with this requirement renders the Company liable to a penalty of £10 in respect of each offence; but the aggregate amount of any penalties imposed under the section in connection with any one distribution of Dividends or interest may not exceed £100.

EXTRAORDINARY RESOLUTIONS.

An Extraordinary Resolution is a Resolution which has been "passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a General Meeting of which notice specifying the intention to propose the Resolution as an Extraordinary Resolution has been duly given" (Section 69). Notice is duly given if given in the manner prescribed by the Articles. It is essential to describe the Resolution in the Notice as an Extraordinary Resolution, as otherwise (even though passed by a three fourths majority) it would be merely an Ordinary Resolution. In one case, however, where every Member of the

* Attorney-General v. Ashton Gas Company, [1904] 2 Ch 621. [1906] A C 10

Company was present at the Meeting and signed a Minute of what purported to be an Extraordinary Resolution for the voluntary winding up of the Company, it was decided that (although no Notice of the Meeting or of the intention to pass the proposed Resolution as an Extraordinary Resolution had been given) the requirements as to Notice could be waived, and accordingly the Resolution was held to be valid.*

If the Notice merely indicates the general purpose for which the Meeting is called it is not good, as the actual Resolution to be submitted must be set out.† Some authorities incline to the view that the Resolution must be either passed in its entirety or rejected, but the point has not been settled.

In calculating the votes it must be borne in mind that those who abstain from voting are in effect opposing the Resolution, as on a show of hands three fourths of those present (not merely of those who vote) must be in favour of the Resolution in order to carry it. If a poll is taken each holder of Shares will be entitled to the number of votes given him by the Articles, and the majority must be computed accordingly [Section 69 (5)]. Care should be exercised not to overlook the votes to which any person who does not vote is entitled, as the Resolution cannot be carried by less than three fourths of the total voting power of those attending the Meeting, including, on a poll, the votes of persons represented by proxy.

If the right to vote at General Meetings is conferred by the Articles on Debenture Holders it cannot be exercised on an Extraordinary Resolution being submitted to a Meeting, as such a Resolution must be passed by "Members" in order to come within the statutory definition.

* *In re Oxted Motor Co.*, [1921] 3 K. B. 92.

† *McConnell v. E. Prill*, [1916] 2 Ch. 57.

The declaration of the Chairman that an Extraordinary Resolution has been carried is, unless a poll is demanded, conclusive evidence without proof of the number or proportion of votes recorded in favour of or against the Resolution [Section 69 (3)].

Articles usually require a poll to be demanded by a specified number of Members, but the Act of 1908 [Section 69 (4)] provides that on an Extraordinary Resolution being submitted three persons who are for the time being entitled to vote may make the demand unless the Articles require some other number not exceeding five. In other words, if the Articles are silent or fix the number at six or more, a poll may be demanded by three persons; but if the Articles specify five or less they will hold good.

A copy of every Extraordinary Resolution must be printed in proper form and filed with the Registrar of Companies within fifteen days after the date on which it is passed, the fee payable being 5s. The copy must be authenticated by the signature of the Chairman of the Meeting or one of the other Directors or the Secretary. If registration is not duly effected the Company and every Director and Manager knowingly and wilfully authorising or permitting the default will be liable to a penalty not exceeding £2 a day (Section 70).

Extraordinary Resolutions may be prescribed by the Articles for the purpose of increasing the Capital, removing a Director from office, or for various other purposes. The Act of 1908, however, prescribes Extraordinary Resolutions for effecting the following objects :—

- (1) Winding up an insolvent Company. In such a case the Resolution must be to the effect that the Company "cannot by reason of its liabilities continue its business, and that it is advisable to wind up" [Section 182 (3)].
- (2) Delegating to the Creditors of the Company the power of appointing Liquidators in a voluntary winding up (Section 190).

Extraordinary Resolutions.

- (3) Sanctioning an arrangement with the Creditors of the Company in a voluntary winding up (Section 191).
- (4) Sanctioning the Liquidator in a voluntary winding up compromising with Creditors, Debtors, and Contributories (Section 214).
- (5) Determining (in the case of a Company which has been wound up voluntarily and is about to be dissolved) how the books and papers are to be disposed of (Section 222).

FALSE STATEMENTS.

If any person, in any Return, Report, Certificate, Balance Sheet, or other document required by or for the purposes of any of the provisions below mentioned, wilfully makes a statement false in any material particular, knowing it to be false, he will be guilty of a misdemeanour, and will be liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction for a term not exceeding four months. In either case a fine may be imposed in addition to or in lieu of such imprisonment, which may be with or without hard labour. The maximum fine that may be imposed on summary conviction is £100 (Section 281 and Perjury Act, 1911, Section 17).

The provisions referred to are as follow :—

- Conclusiveness of Certificates of Incorporation (Section 17).
- Restrictions on appointment or advertisement of Directors (Section 72).
- Restrictions on commencement of business (Section 87).
- Returns as to Allotments (Section 88).
- Statutory Meetings (Section 65).
- Particulars as to Directors and Mortgage Debt and the statement in the form of a Balance Sheet in the Annual Summary (Section 26).

Appointment and remuneration, and powers and duties, of Auditors (Sections 112 and 113).

Obligations of Companies where no Prospectus is issued (Section 82).

Registration of Mortgages and Charges in England and Ireland (Section 93).

Filing of Accounts of Receivers and Managers (Section 95).

Notice by Liquidator in Voluntary Winding up of his appointment (Section 187).

Rights of Creditors in a Voluntary Winding Up (Section 188).

Requirements as to Companies established outside the United Kingdom (Section 274).

Annual Report by Board of Trade (Section 283).

A sentence of eight days' imprisonment has been passed on the Secretary of a Company for falsely declaring that Shares had been allotted to the amount of the Minimum Subscription on which the Directors could proceed to allotment.

FILING OF DOCUMENTS.

The following list of documents requiring registration under The Companies Acts, 1908 to 1917, with the prescribed times for filing with the Registrar of Companies, and the penalties imposed for default in complying with the statutory requirements, may be found useful for reference. There are also set out the official numbers of the various Forms, the officers whose signatures are accepted by the Registrar in each case, and the sections of The Companies (Consolidation) Act, 1908, imposing the respective obligations.

The list, it is believed, comprises all the Forms requiring registration after incorporation. The documents that have to be filed at the time of incorporation are indicated in the section headed "Incorporation of Companies."

Documents required to be filed by Public Companies only.

Name of Document.	Number Form.	To be Signed by.	When to be Filed.	Penalty for Default in Filing.	Section.
Prospectus.	—	All Directors and proposed Directors named therein, or their agents, authorised in writing.	On or before date of publication and before issue.	£5 a day (Company and every person knowingly a party to the issue liable).	80
Statement in lieu of Prospectus.	55	Do.	When no Share Prospectus is issued, and before allotment of Shares or Debentures.	None; but Company cannot obtain Certificate entitling it to commence business until after Statement has been filed.	82
*Declaration of Compliance with provisions as to Allotment and Minimum Subscription (by Company issuing Share Prospectus). ^c	44	Secretary or one of the Directors.	Before business commenced or borrowing powers exercised.	£50 a day if business commenced or borrowing powers exercised (every person responsible for the contravention liable).	87
Declaration of Compliance by Company filing Statement in Lieu of Prospectus.	44A	Do.	Do.	Do.	87
†Report prior to Statutory Meeting.	46	Two Directors (or sole Director and Manager) and the Auditors in case of original; but signature of Secretary or other officer suffices for copy filed.	Forthwith after being sent to Members (which must be at least seven days before Meeting)	None; but any Shareholder may petition the Court for winding up because of default	65, 129, and 137 (1) (b)

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11	Director, Secretary, or Manager.	Within fifteen days after increase was resolved on or took place.	£5 a day (Company and every Director and Manager liable).	44
Documents required to be filed by Companies whether Public or Private.				
4	Director, Secretary, or Manager.	Before business commenced	£5 a day for carrying on business without notifying the original Registered Office or any change therein (Company liable)	62
5	Do.	Forthwith (No time is specified, but this is to be inferred.)		
—	Do	Do	None	34
9	Do	When any change occurs in the recorded particulars respecting Directors.	£5 a day (Company and every Director and Manager liable)	75 and Section 1 of The Companies (Particulars as to Directors) Act, 1917.
9A	Do.	Within one month after Incorporation	£5 a day (Company and every Director, Secretary, and officer of the Company knowingly a party to the default).	2 (1) of the Act of 1917
45	Do	Within one month after any allotment of Shares	£50 a day (every Director, Manager, Secretary, or other officer liable)	88

* Not required to be filed by Companies not having a Share Capital
† Not required to be filed by Companies not having a Share Capital or by Guarantee or Unlimited Companies having a Share Capital.

DOCUMENTS REQUIRED TO BE FILED BY COMPANIES WHETHER PUBLIC OR PRIVATE (continued).

Name of Document.	Number of Form.	To be Signed by.	When to be Filed.	Penalty for Default in Filing.	Section.
†Contract constituting Allottees' title to Shares, and Contract of Sale.	—	All parties thereto.	Within one month after any Shares are allotted for some other consideration than cash.	£50 a day (every Director, Manager, Secretary, or other officer liable).	88
†Particulars of Contract.	52	Director, Secretary, or Manager.	Ditto (for use where contract not reduced to writing).	Do.	88
•Annual Return of Capital and Members.	6A	Secretary or Manager.	Forthwith after completion. (The document must be made up to the fourteenth day after the Annual Meeting and completed within the next seven days).	£5 a day (Company and every Director and Manager liable).	26
•Statement as to Commissioning.	58	All the Directors.	Before Shares are allotted. (Required when commission paid on Shares and no Prospectus or Statement in Lieu of Prospectus is filed.)	None; but Directors presumably liable to compensate Company for misapplication of Shares or Capital money.	89
Extraordinary Resolution.	16A	Director, Secretary, Manager, or Chairman of Meeting.	Within fifteen days after passing.	£2 a day (Company and every Director and Manager liable).	70
Special Resolution.	16.	Director, Secretary, Manager, or Chairman of Confirmatory Meeting.	Within fifteen days after confirmation.	Do.	70
•Notice of Increase of Capital.	10	Director, Secretary, or Manager.	Within fifteen days after passing or confirmation of Resolution.	£5 a day (Company and every Director and Manager liable).	44

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Statement of Increase of Capital.	26	Do.	Do.	Interest at the rate of Five per centum per annum from date of increase (Company liable).	Stamp Act, 1891, s. 112; Finance Act, 1899, s. 7; Revenue Act, 1901, s. 5; and Finance Act, 1920, s. 39 (1)
•	•	•	•	•	42
• Notice of Consolidation, Division, or Conversion of Shares into Stock or of Reconversion of Stock into Shares.	28	Do.	Not specified (therefore within reasonable time)*.	None.	
• Particulars as to Mortgages or charges	47	Director, Manager, Solicitor to the Company or to mortgagee, or the mortgagee.	Within twenty-one days after creation of Mortgage or Charge (Instrument also to be produced).	£50 a day and a fine of £100 (Company and every Director, Manager, Secretary, or other person responsible for default liable).	93 (1) and 99
• Particulars as to a Series of Debentures.	47A	Director, Manager, Solicitor to Company, or any Debenture Holder or his Solicitor.	Within twenty-one days after execution of Trust Deed or any Debentures (if no Deed), the Deed or one of the Debentures, as the case may be, being produced.	£50 a day and a fine of £100 (Company and every Director, Manager, Secretary, or other person responsible for default liable).	93 (3) and 99
• Particulars of Subsequent Issues of a Registered series of Debentures.	48	Do.	Not specified.	Do.	Do.
• Memorandum of Satisfaction of Mortgage or Charge.	49	Director, Secretary, or Manager.	At option of Company, but desirable to file forthwith.	None	97

* Not required to be filed by Companies not having a Share Capital or by Unlimited Companies having a Share Capital.

† Not required to be filed by Companies not having a Share Capital.

Filing of Documents.

DOCUMENTS REQUIRED TO BE FILED BY COMPANIES WHETHER PUBLIC OR PRIVATE (continued).

Name of Document.	Number of Form.	To be Signed by.	When to be Filed.	Penalty for Default in Filing.	Section.
Notice of Appointment of Receiver or Manager.	53	Person obtaining Order or making appointment, or his Solicitor.	Within seven days from date of Order of Court or appointment.	£5 a day (person obtaining Order or making appointment liable).	94
Receiver's or Manager's Abstract of Receipts and Payments.	57	Receiver or Manager.	Half-yearly and on ceasing to act.	£50 (Receiver or Manager appointed under Instrument liable)	95
Notice of Ceasing to Act as Receiver or Manager.	57A	Do	Forthwith.	Do.	95
*Copy Order of Court confirming Reduction of Share Capital, and Minute giving particulars. (Order must be produced).	—	Solicitor obtaining the Order (unless, as is usual, office copy filed)	Not specified	None; but Reduction does not take effect until Order is registered.	51
Office Copy Order of Court confirming Alteration of Memorandum of Association	—	—	Within fifteen days from date of the Order.	£10 a day (Company liable).	9
Printed copy of Memorandum as altered.	—	Solicitor obtaining the Order.	Do.	Do.	9
Memorandum as to Return of Undivided Profits in Reduction of paid up Capital.	—	Secretary or other officer.	No time specified	None; but Resolution as to Reduction does not take effect until Memorandum filed.	40

Order of Court confirming Special Resolution to modify Memorandum by reorganisation of Share Capital.	(An office copy of the Order must be filed).	—	Within seven days from date of the Order.	Resolution does not take effect until copy Order filed.	45
Documents required to be filed by Companies in Voluntary Liquidation.					
Ordinary Resolution to Wind Up.	—	Chairman of Meeting or Liquidator	As soon as possible* (no statutory obligation to file, but necessary to do so to show that Company is in liquidation).	—	182
• Extraordinary Resolution to Wind Up.	16A	Do.	Within fifteen days after passing.	£2 a day (Company and Liquidator liable).	70 and 186
Special Resolution to Wind Up	16	Do.	Within fifteen days after confirmation.	Do	Do.
Notice of Appointment of Liquidator.	39A	Liquidator.	Within twenty-one days after appointment.	£5 a day (Liquidator liable)	187
† Resolution passed at Meeting of Creditors pursuant to Section 38	—	Do	As soon as possible	—	Winding-up Rules 129 and 149A
Liquidator's Statement of Receipts and Payments.	92	Do	Within thirty days of completion of period. (First Statement covers twelve months, and each succeeding Statement six months of Liquidation.)	£50 a day (Liquidator liable).	224 and Rule 189
• Not required to be filed by Companies not having a Share Capital, or by Guarantee Companies having a Share Capital registered before 1901, or by Unlimited Companies having a Share Capital † To be filed with the Registrar of the Court which would have jurisdiction in the event of the Company being wound up compulsorily.					

DOCUMENTS REQUIRED TO BE FILED BY COMPANIES IN VOLUNTARY LIQUIDATION (*continued*).

Name of Document.	Number of Form.	To be Signed by	When to be Filed.	Penalty for Default in Filing.	Section.
Affidavit verifying Liquidator's Statement of Accounts.	93	To be sworn by Liquidator.	(To accompany Statements of Receipts and Payments.)	—	Rule 189
Liquidator's Trading Account.	94	Liquidator.	Do. (if applicable).	£50 a day (Liquidator liable).	224 and Rule 189
List of Dividends or Composition.	95	Do.	Do.	Do.	Do.
List of Amounts paid or payable to Contributors.	96	Do.	Do.	Do.	Do.
Extraordinary Resolution as to Disposal of papers by Liquidator.	16A	Chairman of Meeting.	Within fifteen days after passing.	£2 a day (Company and Liquidator liable).	70, 186, and 222 (1)
Return of Final Winding-Up Meeting.	15	Liquidator.	Within one week after Meeting held.	£5 a day (Liquidator liable).	195

FOREIGN AND COLONIAL COMPANIES.

Every Company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom—and every Assurance Company constituted outside the United Kingdom which carries on Assurance business within the United Kingdom, whether incorporated or not—must file with the Registrar of Companies within one month from the establishment of the place of business—

- (a) A certified copy of the Charter, Statutes, or Memorandum and Articles of the Company, or other instrument constituting or defining its constitution, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) A List of the Directors of the Company;
- (c) The names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

[Section 274 (1), and Assurance Companies Act, 1909, Section 19].

Companies incorporated in British Possessions, and having a place of business within the United Kingdom, which have complied with the foregoing requirements have the same power to hold land in the United Kingdom as if they were incorporated under the Companies (Consolidation) Act (Section 275). This privilege is not extended to other Companies incorporated or constituted outside the United Kingdom, which remain under the disabilities imposed by the Mortmain Acts, and are not permitted to acquire an interest in land, whether freehold or leasehold, without a Licence from the Secretary of State for the Home Department, the cost of obtaining which is about £70.

The List of Directors necessitated by Paragraph (b) above quoted must contain the additional particulars required by The Companies (Particulars as to Directors) Act, 1917, and the expression "Director" has the extended meaning given to it by that Act. (*See under REGISTER OF DIRECTORS.*)

Every foreign Company which has since the 22nd November, 1916, established a place of business in the United Kingdom is required to have mentioned in legible characters the name of every Director in all trade catalogues, trade circulars, showcards, or business letters in which the name of the Company appears and which are issued or sent out to any person in any part of His Majesty's Dominions [The Companies (Particulars as to Directors) Act, 1917, Section 2 (2), and The Registration of Business Names Act, 1916, Section 18 (1)].

In the event of any alteration being made in the Charter or other instrument or in any of the registered particulars respecting the Directors, notice thereof must be filed with the Registrar. The time allowed for filing is twenty-one days after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom from the place where the Company is incorporated or constituted (Order of Board of Trade dated the 29th March, 1909). Any process or notice required to be served on the Company may be addressed to any person whose name has been so filed and left at or sent to the address which has been filed [Section 274 (2)].

A Statement in the form of a Balance Sheet, as required to be filed by Public Companies incorporated under The Companies (Consolidation) Act, 1908, must be filed annually, unless the Company is within the definition of "Private Company," or is an Assurance Company which has filed copies of the Accounts and Balance Sheet required to be deposited with the Board of Trade [Section 274 (3) and *see* p. 24].

Where the word "Limited" is part of the name the Company must—

- (a) State the country in which it is incorporated in every Prospectus inviting subscriptions for its Shares or Debentures in the United Kingdom;
- (b) Conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the Company and the country in which it is incorporated, and
- (c) Have the name of the Company and of the country in which it is incorporated mentioned in legible characters in all billheads and letterpaper, and in all notices, advertisements, and other official publications.

[Section 274 (4)].

Failure to comply with the above requirements renders the Company and its officers and agents liable to a fine not exceeding £50, or in the case of a continuing offence £5 a day [Section 274 (5)].

The expression "place of business" includes a Share Transfer or Share Registration Office [Section 274 (6)].

The Court has power (under Section 268) to wind up Foreign and Colonial Companies having a place of business in the United Kingdom, but if winding up has already commenced in the country of origin the Order of the Court usually restricts the powers of the liquidator to dealing only with the English assets.*

FORFEITURE AND SURRENDER OF SHARES.

Articles of Association usually empower Directors to forfeit the Shares of any Member which are not fully paid up in the event of non-payment of Calls, and afterwards to dispose of the Shares in any manner they think fit. The prescribed procedure must be strictly followed,

* *Matheson Brothers*, [1884] 27 Ch. D. 225. *Commercial Bank of South Australia*, [1886] 33 Ch. D. 174. *Syria Ottoman Railway Company*, [1904] 20 T. L. R. 217.

as any irregularity will invalidate the forfeiture, and it should be remembered that Shares cannot be forfeited for non-payment of debts other than Calls due in respect of such Shares.* If the authority is not given by the Articles, any forfeiture or surrender will not be valid unless approved by the Court.†

It is also the rule for the Articles to provide that the liability to pay Calls due at the time of forfeiture—with interest not exceeding a specified rate, which is frequently made ten per centum per annum so as to be penal—shall continue, notwithstanding the forfeiture. Such a provision enables the Directors to sue a former holder for the amount due, with interest. On a reissue of forfeited Shares the Company may treat them as, paid up to any extent not exceeding the amount paid by the former holder, and may accept as consideration for such reissue a sum less than that actually paid up before the forfeiture. Including the sum paid by the former holder, the Company will be entitled to receive at least the nominal value of the Shares, and consequently the reissue does not amount to an issue at a discount.‡ When forfeited Shares§ are reissued the Company may make a fresh Call upon the new holder in respect of the Call unpaid by the former holder, but any amount paid by the former holder must be placed in reduction of the amount payable by the new holder. If Shares with Calls on them unpaid are by the Articles subjected to any disability in respect of voting or other rights the purchaser takes them subject to such disability until all Calls are paid.¶

A provision in the Articles authorising the Directors to annul a forfeiture does not enable them to do so adversely to the person who formerly held the Shares, so

* *Hopkinson v. Mortimer, Harley & Co.*, [1917] 1 Ch. 646.

† *Spackman v. Evans*, [1868] L. R. 3 H. L. 171.

‡ *Morrison v. Trustees, Executors, and Securities Insurance Corporation*, [1898] W. N. 154.

§ *Randt Gold Mining Co.*, [1904] 2 Ch. 468.

as to reinstate him with a liability of which he had been relieved by the operation of the forfeiture. Directors are, therefore, not at liberty to annul a forfeiture without obtaining the consent of the former holder of the Shares.*

A surrender of Shares usually has the effect of reducing the Company's Capital, and consequently is invalid without the sanction of the Court (*see* REDUCTION OF CAPITAL). For instance, a surrender of partly paid Shares, although voluntarily made for the benefit of the Company, will in effect constitute a purchase by the Company of those Shares in consideration of the release of the Shareholder from his liability for the amount unpaid, and thus reduce the Capital.† Even a surrender of fully paid Shares is not generally permissible, as the equilibrium of the Balance Sheet would be thereby disturbed and the Company might be enabled to pay a Dividend which could not otherwise be justified.‡ But a surrender of fully paid Six per Cent. Preference Shares in exchange for fully paid Five per Cent. Preference Shares has been held to be valid, seeing that no reduction of Capital was involved, and the transaction did not amount to a purchase by the Company of its own Shares.§ If within the terms of the Articles, a surrender may also be made in circumstances which would justify a forfeiture; but it is advisable for the Directors to proceed with the view of forfeiting the Shares in the prescribed manner.

FORGERY, PERSONATION, &c.

Any person who forges or alters, with intent to defraud, any Debenture, Warrant, Scrip, or other "valuable security" within the meaning of Section 18 of The Forgery Act, 1913, is guilty of felony, and is liable to penal servitude for any term not exceeding fourteen

* *Re* Exchange Trust, [1903] 1 Ch 711.

† *Bellerby v. Rowland and Marwood's Steamship Co.*, [1902] 2 Ch 14.

‡ *Re* Denver Hotel Co., [1893] 1 Ch. 495.

§ *Rowell v. John Rowell & Sons*, [1912] 2 Ch D. 609

years. The same penalty is incurred by any person who obtains or demands any money in respect of such an instrument, knowing it to be forged or altered (Forgery Act, 1913, Sections 1, 2, and 7).

Any person unlawfully engraving or printing a Share Certificate, Debenture, or like document is liable to penal servitude for a term not exceeding seven years (Forgery Act, 1913, Section 9).

The foregoing provisions only apply to England and Ireland. As to offences committed in Scotland *see* Section 38 of the Act of 1908 (Appendix).

Anyone personating an owner of a share or interest in a Company in order to obtain any money due to the owner is liable to penal servitude for life or for any term not less than three years [Section 38 (1) (ii)].

FRAUDULENT PREFERENCE.

A conveyance or assignment by a Company of all its property to trustees for the benefit of all its creditors is void [Section 210 (3)].

A Debenture, issued to a trustee on behalf of a Company's creditors, conferring a floating charge on the whole of the assets of the Company, has been held to be a conveyance or assignment within the meaning of the section, and therefore void. The execution of such an instrument is an attempt to wind up the affairs of the Company without complying with the statutory regulations.*

Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property effected or made to any creditor for the purpose of placing him in a better position than other creditors will amount to a fraudulent preference and be void if at the time the Company is insolvent and it is wound up (either voluntarily

* *London Joint City & Midland Bank v. Dickinson, Limited*, [1922] W. N. 13.

or by or subject to the supervision of the Court) within three months after the date of the transaction [Section 210 (1) and (2)]. The decision of the Court in determining the validity or otherwise of the arrangement will depend upon whether or not the "substantial, effectual, and dominant" motive of the Directors of the Company was to put the creditor in a preferential position.

If no order for winding up by or under the supervision of the Court is made the period of three months is measured from the date of the resolution for voluntary winding up.

Where a compulsory winding-up Order is granted the period of three months dates from the presentation of the petition, even if the Company has previously been in voluntary liquidation. If the voluntary liquidation is "continued under the supervision of the Court," the period dates from the presentation of the petition. It is accordingly possible in any case of voluntary liquidation superseded by a compulsory Order or continued under the supervision of the Court for transactions to become valid which would otherwise have been void.*

When a Company goes into liquidation within three months after the creation of a floating charge on its undertaking or property the charge will—unless it is proved that the Company immediately after such creation was solvent—be invalid, except to the amount of any cash paid to the Company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per centum per annum (Section 212).

GENERAL MEETINGS.

In addition to the Statutory and Annual Meetings, Companies may hold General Meetings from time to time for the transaction of special business, such Meetings being called "Extraordinary General Meetings."

* *Re Russell Hunting Record Co.*, [1910] 2 Ch. 78.

The normal position is that every Shareholder has a right to be present at General Meetings of the Company. Frequently, however, the right is wholly or partially withdrawn by the Articles of Association from the holders of certain classes of Shares. The validity of such a provision has never been judicially determined; but it might be contended that a Meeting from which a class of Members is excluded is not a "General Meeting."

Articles usually provide that the Chairman may, with the consent of those present, adjourn a Meeting, but that no business shall be transacted at the adjourned Meeting other than that left unfinished at the original gathering. Clause 55 of the Table A of 1908, however, requires the Chairman to adjourn if, so directed by the Meeting.

No business may be transacted unless a quorum of Members is present (*see QUORUM*).

In the ordinary course Meetings are convened by the Directors, but Section 66 of the Act confers on the holders of not less than one tenth of the issued Share Capital upon which all Calls or other sums then due have been paid, the right to requisition the Directors to convene a Meeting. The bearers of Share Warrants, whether deemed by the Articles to be Members or not, can join in a requisition as holders of the Shares specified in the Warrants. Any provision in the Articles requiring the requisitionists to hold a larger proportion is invalid, but the power may be conferred on the holders of a smaller proportion. It has been held that the words "upon which all Calls or other sums then due have been paid" refer to the issued Capital and not to the one tenth held by the requisitionists, and that it therefore suffices for the requisitionists to hold one tenth of the Capital that has been issued and upon which no sum is due.*

The requisition must state the objects of the Meeting, and be signed by the requisitionists and left at the

* *Fruit and Vegetable Growers Association v. Kekewich*, [1912] 2 Ch. 52

Registered Office. It may consist of several documents in like form, each signed by one or more requisitionists [Section 66 (2)]. A slight difference in the wording, not affecting the meaning of the requisition, will not invalidate the documents.*

If the Directors do not proceed to cause a Meeting to be held within twenty-one days after the deposit of the requisition, a majority in value of the requisitionists may convene the Meeting, to be held at any time within three months from the date of the deposit [Section 66 (3)].

If a Resolution requiring confirmation as a Special Resolution is passed, it is the duty of the Directors to convene a further Meeting forthwith for the purpose of considering the Resolution and, if thought fit, confirming it; but should the Directors fail to do so within seven days after the passing of the Resolution, such Meeting may be convened by the requisitionists, or a majority of them in value [Section 66 (4)].

Meetings must be convened by requisitionists as nearly as possible in the same manner as those convened by the Directors [Section 66 (5)].

The Secretary must not convene a Meeting in response to a requisition within the period allowed the Directors without their authority.† Whether the requisitionists can require him to do so after that time has elapsed has not yet been judicially determined.

Where a Company is being wound up voluntarily the Liquidator may convene General Meetings for the purpose of obtaining the sanction of the Company by Extraordinary or Special Resolution, or for any other purposes he may think fit. If the liquidation extends over a period exceeding twelve months the Liquidator must summon a General Meeting at the end of the first year from the commencement of the winding up and of each succeeding

* *Fruit and Vegetable Growers Association v. Kekewich*, [1912] 2 Ch. 52.

† *State of Wyoming Syndicate*, [1901] 2 Ch. 431.

year, or as soon thereafter as may be convenient, and must lay before the Meeting an account of his acts and dealings, and of the conduct of the winding up during the preceding year (Section 194).

Where the Articles make no provision, or insufficient provision, for calling General Meetings the following regulations apply, by virtue of Section 67 :—

- (1) A Meeting may be called by seven days' notice in writing, served on every Member in the manner required by Table A (1908).
- (2) Five Members may call a Meeting.
- (3) Any person elected by the Members present at a Meeting may be Chairman thereof.
- (4) Every Member will have one vote.

Until the contrary is proved all Meetings in respect whereof Minutes have been made are deemed to have been duly held and convened, and the proceedings to have been duly had, and all appointments are deemed valid (Section 71).

The Directors have no power to postpone a General Meeting unless the Articles expressly authorise them to do so. Where it is desirable to postpone consideration of the business proposed, the Meeting should be formally held and adjourned to a convenient date.

See also ANNUAL MEETING, CHAIRMAN, MEETINGS, MINUTES, NOTICES, PROXIES, STATUTORY MEETING, and VOTES.

HISTORY OF COMPANIES.

The word "Company" is derived from the Latin words *cum* and *panis*, and was originally applied to an association of persons who took their meals together. "Guild" had a similar signification. But except in the liveries in the City of London, the seat of the old Guilds, and some ancient boroughs, the social characteristic

no longer survives. The word now simply means an incorporated body of persons associated for some business enterprise or common interest.

The Chartered Company was the earliest kind of Joint Stock Company, the granting of a Charter being the exclusive right of the Crown. Through the agency of these Companies many of the English Colonies were first settled, the foundations of the Empire laid, and the foreign trade and commerce of the country were mainly conducted. Examples of notable Chartered Companies are the Steelyard Society (1232), which was an association of a number of adventurers from the Hanseatic towns who owned the Steelyard on the banks of the Thames (from 900 to 1597 an important trading post in the Thames basin); the Fraternity of St. Thomas à Becket, who were afterwards known as the Merchant Adventurers of England, and in 1505 were granted a Charter under that name; the New River Company (1613), the Bank of England (1694), and the New Zealand Company (1839).

During Queen Elizabeth's reign large numbers of trading associations were formed. They were constituted either as "Regulated Companies" or as "Joint Stock Companies." Nearly all belonged to the former class, and at the close of the seventeenth century only three Joint Stock Companies (the East India, the Royal African, and the Hudson Bay Companies) were in existence. These three were, however, probably of greater importance than the whole of the remaining associations.

Each Member of a Regulated Company served an apprenticeship, and afterwards traded solely on his own account and as he thought fit, subject only to the Company's regulations. His liability in respect of the debts of the Company was unlimited. On the other hand each Member of a Joint Stock Company was merged in the corporate body, but he did not require any knowledge of the business carried on, and his liability was limited to the amount of his Shares. He

could not be called upon to pay additional sums, nor could he obtain a return of his Capital. He was, however, at any time at liberty to transfer his Shares to any person, subject to the Company's regulations.

Considerable friction between the two classes resulted, but the Joint Stock Company eventually supplanted its rival corporation, for, as was pointed out in 1681 by the East India Company in reply to a complaint, "It cannot be denied by a reasonable man that a Joint Stock is capable of a far greater extension as to the number of traders and largeness of stock, than any Regulated Company can be. Because, in a Joint Stock, noblemen, gentlemen, shopkeepers, widows, orphans, and all other subjects, may be traders, and employ their stock therein; whereas in a Regulated Company, such as the Turkey Company is, none can be traders but such as they call legitimate or bred merchants."

Much good work was, however, done by the Regulated Companies, but owing to the greater restrictions to which they were subject they were gradually superseded by Joint Stock Companies, and at the close of the eighteenth century very few survived.

During the seventeenth and eighteenth centuries and the early part of the nineteenth century, many "unincorporated or "Common Law" Companies were formed. Such bodies were in effect large partnerships with transferable interests. Their position from a legal point of view was for many years somewhat doubtful, but eventually they were declared by the Courts to be lawful, and statutory provision was made for the granting of Letters Patent to such Companies, enabling them to sue and to be sued.

Many evils resulted from the lack of legislative control over these Common Law Companies, and as the membership was subject to fluctuation it was impossible for persons dealing with them to know of whom they were composed.

Thus, some measure of registration became imperative, and in 1844 a Joint Stock Companies Act was passed which made provision for Incorporation. That Act proved to be the first of a long series of Companies Acts, the most recent being The Companies (Particulars as to Directors) Act, 1917. The principal Act now in force is The Companies (Consolidation) Act, 1908, which is regarded throughout the Empire as the model of its kind, and several Colonial Statutes have been already based upon it. The Act has undergone some slight amendment by The Companies Act, 1913, The Companies (Foreign Interests) Act, 1917, and The Companies (Particulars as to Directors) Act, 1917, the texts of which are given in the Appendix.

ILLEGAL ASSOCIATIONS.

Banking Companies with more than ten Members, and Companies, Associations, or Partnerships consisting of more than twenty persons having for their object the acquisition of gain, either by the Companies, Associations, or Partnerships, or the individual Members thereof, are illegal, unless registered under the Companies Acts, or formed in pursuance of some other Act or of Letters Patent. Exception is, however, made in favour of Companies engaged in working mines within the Stannaries (*i.e.* Cornwall and Devon) and subject to the jurisdiction of the Court exercising the Stannaries jurisdiction (Section 1). Illegal Associations cannot be wound up under the Companies Acts,* nor can they sue for debts due to them. Every Member is personally liable for any debts incurred, unless the creditor suing was aware when the transaction was effected that he was dealing with an illegal Association.

INCOME TAX.

Income Tax is payable by Companies on the average profit (not dividend) for the preceding three years, whether divided or not. No exemption or abatement is granted,

* *Re Padstow Total Loss and Collision Association*, [1882] 20 Ch D 137.
8*

however small the profits may be. It is the duty of the Secretary to furnish accounts to the Assessor and also render returns of all "salaries, pensions, fees, wages, perquisites, and profits" paid or payable to the Directors or Officers. He must also, upon demand, send the Assessor a return of the names and residences of any persons (including Directors) employed by the Company whose remuneration exceeds £135 per annum, and also of any who are paid £135 or less and who have some other employment.

It is not uncommon for Directors of Private Companies who hold a large proportion of the Capital to receive only nominal sums for their services each year, and to look to the Dividends on their Shares as their principal remuneration. In such cases some part of the Dividends is, in fact, "earned income," but no allowance can be claimed on that ground, as it is technically "unearned." If, however, a commission on the profits were paid to the Directors by way of remuneration, Income Tax would, as a general rule, be payable on such sum after deduction of the earned income allowance. To remedy the anomaly some Companies have, since the differentiation was made between earned and unearned income, altered their Articles of Association and increased the remuneration payable. In this way, although the aggregate amount charged has not been affected the total tax payable has been reduced, a larger proportion becoming subject to the earned income allowance. It need hardly be stated that any such arrangement must be entirely *bonâ fide*.

INCORPORATION OF COMPANIES.

A Company Limited by Shares having special Articles is incorporated by filing with the Registrar a Memorandum of Association, specifying the objects of the Company and certain other particulars (*see* p. 140), Articles of Association prescribing the Regulations, a Statement of the Nominal

Capital, and a Declaration of Compliance with the requirements of the Act of 1908. If there are no Articles, the Regulations contained in Table A apply, but some special Articles are almost invariably found to be necessary. For example, a Private Company must have Special Articles in order to comply with Section 121 of the Act of 1908 (as amended by Section 1 (2) of the Act of 1913), and several provisions more or less essential to Public Companies do not appear in Table A. A few further Forms, as specified in the following pages, are required either at the time of incorporation or shortly afterwards.

The documents must be duly stamped and dated. The Memorandum and Articles of a Private Company have to be subscribed by at least two persons, but in the case of a Public Company seven signatories are necessary (Sections 2 and 12). Corporations and firms may also be Subscribers, but notwithstanding the definition of "persons" contained in The Interpretation Act, 1889,* the Registrar of Companies does not accept firms or corporations as "persons" for the purposes of subscribing a Company's Memorandum or Articles, and the names of any so subscribing must be in addition to the minimum number of signatories required for a Private or Public Company as the case may be. The full postal addresses and descriptions of the Subscribers must be given, and their signatures have to be attested by one or more witnesses, whose addresses and descriptions are also required to be added. If the Company has a Share Capital each Subscriber of the Memorandum must write opposite to his signature the number of Shares he takes, which must not be less than one (Sections 3, 4, and 5). Married women may subscribe, and persons of alien nationality may also subscribe, but minors should not do so. The Statement of Capital may be signed by an officer of the proposed Company, the Solicitor acting in

* Section 19 of the Act reads: "In this Act and in every Act passed after the commencement of this Act the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

the formation, or a Subscriber to the Memorandum. The Declaration must be made by a Solicitor engaged in the formation of the Company or a person named in the Articles as a Director or Secretary (Section 17).

Upon the documents being lodged at the Companies Registry they are examined by the Registrar, and if no question arises they are provisionally accepted for registration on payment of the duty and fees. Two or three days later the papers undergo a second official scrutiny, and if they are then passed the Registrar issues his Certificate of Incorporation. Until recently the Certificate was dated the day on which the duty and fees were paid, but the present practice is to insert in the Certificate the date on which the document is actually signed by the Registrar. The Certificate is conclusive evidence that all the requirements of the Companies Act in respect of registration and all matters precedent and incidental thereto have been complied with, and that the Company has been duly registered (Section 17).

From the date of the Certificate the Subscribers—together with such other persons as may from time to time become Members of the Company—form a body corporate, immediately capable of exercising all the functions of an Incorporated Company, having perpetual succession and a Common Seal, with power to hold lands, but with liability on the part of the Members to contribute to the assets of the Company in the event of its being wound up (Section 16). A Public Company cannot exercise borrowing powers or commence business until it has obtained a Trading Certificate from the Registrar. (See COMMENCEMENT OF BUSINESS.)

Certain Associations, Not for Profit may not hold more than two acres of land without the consent of the Board of Trade. (See ASSOCIATIONS NOT FOR PROFIT.)

Companies, Associations, or Partnerships having for their object the acquisition of gain (whether collectively or by the individual members), which consist of more

than twenty persons—or of more than ten persons in the case of a Banking business—must either be registered under the Companies Acts or formed in pursuance of some other Act, or of Letters Patent. The only bodies not subject to this obligation are Companies engaged in working mines within the Stannaries (*i.e.* Cornwall and Devon) and subject to the jurisdiction of the Court exercising Stannaries jurisdiction (Section 1).

The Fees payable on the registration of Companies having a Share Capital are determined by Section 244 and Table B (Part 1) in the First Schedule to The Companies (Consolidation) Act, 1908. Where the Company is registered with limited liability, duty at the rate of £1 for every £100, or fraction thereof, must also be paid pursuant to Section 112 of The Stamp Act, 1891, as amended by Section 7 of The Finance Act, 1899, and Section 39 of The Finance Act, 1920.

The Table on this and the following page indicates the amounts payable on registration with limited liability of **Private Companies** having a Share Capital and governed by special Articles of Association. In the total are included the deed stamps of 10s. each payable on the Memorandum and Articles and the fee stamps of 5s. which have to be impressed on the Articles, Notice of Situation of Registered Office (Form No. 4), Particulars Respecting Directors (Form No. 9A), and Declaration of Compliance with the Requirements of the Companies Act (Form No. 41), which together amount to £2.

NOMINAL SHARE CAPITAL	<i>Ad Valorem</i> Duty on Statement of Capital	Fee Stamp on Memorandum of Association	TOTAL DUTY AND FEES.
£100	£1 0	£2 0	£5 0 0
250	3 0	2 0	7 0 0
500	5 0	2 0	9 0 0
1,000	10 0	2 0	14 0 0
1,500	15 0	2 0	19 0 0
2,000	20 0	2 0	24 0 0
3,000	30 0	3 0	35 0 0

DUTIES AND FEES PAYABLE—(Continued).

NOMINAL SHARE CAPITAL.	<i>Ad Valorem</i> Duty on Statement of Capital.	Fee Stamp on Memorandum of Association.	TOTAL DUTY AND FEES.
£4,000	£40 0	£4 0	£46 0 0
5,000	50 0	5 0	57 0 0
6,000	60 0	5 5	67 5 0
7,000	70 0	5 10	77 10 0
8,000	80 0	5 15	87 15 0
9,000	90 0	6 0	98 0 0
10,000	100 0	6 5	108 5 0
11,000	110 0	6 10	118 10 0
12,000	120 0	6 15	128 15 0
13,000	130 0	7 0	139 0 0
14,000	140 0	7 5	149 5 0
15,000	150 0	7 10	159 10 0
16,000	160 0	7 15	169 15 0
17,000	170 0	8 0	180 0 0
18,000	180 0	8 5	190 5 0
19,000	190 0	8 10	200 10 0
20,000	200 0	8 15	210 15 0
25,000	250 0	10 0	262 0 0
30,000	300 0	11 5	313 5 0
35,000	350 0	12 10	364 10 0
40,000	400 0	13 15	415 15 0
45,000	450 0	15 0	467 0 0
50,000	500 0	16 5	518 5 0
60,000	600 0	18 15	620 15 0
70,000	700 0	21 5	723 5 0
75,000	750 0	22 10	774 10 0
80,000	800 0	23 15	825 15 0
90,000	900 0	26 5	928 5 0
100,000	1,000 0	28 15	1,030 15 0
150,000	1,500 0	31 5	1,533 5 0
200,000	2,000 0	33 15	2,035 15 0
250,000	2,500 0	36 5	2,538 5 0
300,000	3,000 0	38 15	3,040 15 0
350,000	3,500 0	41 5	3,543 5 0
400,000	4,000 0	43 15	4,045 15 0
450,000	4,500 0	46 5	4,548 5 0
500,000	5,000 0	48 15	5,050 15 0
525,000	5,250 0	50 0	5,302 0 0
600,000	6,000 0	50 0	6,052 0 0
700,000	7,000 0	50 0	7,052 0 0
800,000	8,000 0	50 0	8,052 0 0
900,000	9,000 0	50 0	9,052 0 0
1,000,000	10,000 0	50 0	10,052 0 0

And so on at the rate of £1 further Capital Duty for every additional £100 or fraction thereof. £50 is the

maximum fee stamp imposed on the Memorandum of Association. Where the Company is registered with unlimited liability a Statement of Nominal Capital is not required, Capital Duty being imposed upon Limited Companies only.

In the case of **Public Companies** the following further Forms are required, a 5s. fee stamp being payable on each: Consent to Act as Director (Form No. 42), Contract by Directors to Take Qualification Shares, when not signed for in Memorandum (Form No. 42A), List of Persons who have Consented to be Directors (Form No. 43), Prospectus or Statement in Lieu of Prospectus (Form No. 55), and a Declaration of Compliance with certain statutory requirements (Form No. 44 or 44A, according to whether a Prospectus or Statement in lieu thereof has been filed). Where the Directors' qualification is Shares to the value of £5 or more, the Contract to take them requires a stamp of 6d. in respect of each signature (Stamp Act, 1891, *Schedule*).

The fees payable on registration of a Company not having a Share Capital are governed by Section 244 and Table B (Part 2) in the First Schedule, and are as follow:—

	£	s.	d.
For registration of a Company whose Number of Members, as stated in the Articles of Association, does not exceed 20	2	0	0
For registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 20, but does not exceed 100	5	0	0
For registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every 50 Members or less number than 50 Members after the first 100.			
For registration of a Company in which the Number of Members is stated in the Articles of Association to be unlimited, a fee of	20	0	0

For registration of any increase in the Number of
 Members made after the registration of the
 Company, in respect of every 50 Members, or
 less than 50 Members, of such increase ... 0 5 0

A Company not having a Share Capital is, however, not liable to pay on the whole a greater fee than £20 in respect of its Membership, taking into account the fee paid when the Company was incorporated. In addition thereto deed stamps of 10s. each are required on the Memorandum and Articles, and fee stamps of 5s. on the Articles, Notice of Situation of Registered Office (Form No. 4), Particulars Respecting Directors (Form No. 9A), Declaration of Compliance (Form No. 41), Consent to Act as Director (Form No. 42), List of Persons who have consented to be Directors (Form No. 43), Statement in Lieu of Prospectus (Form No. 55), and the further Declaration of Compliance (Form No. 44A).

INCREASE OF CAPITAL.

If authorised by the Articles, a Company Limited by Shares may increase its Capital by the issue of new Shares of such amount as may be thought expedient (Section 41). The increase must be effected by Resolution, the nature of which is determined by the provisions of the Articles. In the case of either a Special or Extraordinary Resolution the Resolution must be printed and registered, and a filing fee of 5s. paid. Where the Articles authorise an increase by Resolution of the Company in General Meeting or of the Directors, the Ordinary Resolution or the Directors' Resolution, as the case may be, does not require to be registered.

Notice of any Increase of Capital must be filed with the Registrar of Companies within fifteen days after the passing, or in the case of a Special Resolution, the confirmation, of the Resolution authorising the increase (Section 44). This Notice must be impressed with a

registration stamp of 5s. and a fee stamp regulated by the amount of the increase, in accordance with the following scale :—

	£	s.	d.
For every £1000 of Nominal Capital, or part of £1000 after the first £2000, up to £5000	1	0	0
For every £1000 of Nominal Capital, or part of £1000 after the first £5000, up to £100,000	0	5	0
For every £1000 of Nominal Capital, or part of £1000 after the first £100,000, until the sum of £525,000 is reached	0	1	0

In calculating the fees the amount paid on Incorporation must be taken into consideration. No fee is required if the Capital when increased does not exceed £2000, nor after the Capital has amounted to £525,000, the maximum fee of £50 having already been paid.

Default in filing the Notice renders the Company, and every Director and Manager who is aware of and permits the default, liable to a fine not exceeding £5 a day (Section 44).

In addition to the Notice a Statement of the Increase, impressed with an *ad valorem* stamp duty of £1 for every £100, or fraction thereof, of the amount of the increase, must be filed with the Registrar pursuant to Section 112 of The Stamp Act, 1891, as amended by Section 7 of The Finance Act, 1899, and Section 39 of The Finance Act, 1920. The period within which the Statement has to be filed is also limited to fifteen days. If that time is exceeded interest (calculated from the date of the increase) at the rate of five per centum per annum on the amount of the duty is imposed (Revenue Act, 1903, Section 5).

If a Company by Resolution empowers its Directors to increase the Capital to a specific amount the increase must be registered within fifteen days and duty calculated on the total amount of the authorised increase paid thereon, even though the Directors may not exercise the authority

to increase the Capital conferred on them by the Resolution, or may do so only in part.*

Every copy of the Memorandum of Association issued after the Capital has been increased must be in accordance with the alteration. If this requirement is not complied with the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, will be liable to a fine not exceeding £1 for each copy in respect of which default occurs (Section 41).

A Company Limited by Guarantee and having a Share Capital registered after the 31st December, 1900, may, if authorised by its Articles, increase its Capital in the same manner and subject to the same conditions as a Company Limited by Shares (Section 56). In the case of a Company Limited by Guarantee and having a Share Capital registered before 1901, the Capital was not required to be stated in the Memorandum, but only in the Articles. Such a Company, therefore, can increase its Capital by altering its Articles.

An Unlimited Company may increase its Capital by altering its Articles. A printed copy of the Special Resolution effecting such alteration and also a Notice of Increase must be filed, but a Statement of Increase is not required.

INCREASE OF MEMBERSHIP.

If without Share Capital, a Company Limited by Guarantee or an Unlimited Company must state in its Articles the number of Members with which the Company proposes to be registered, so that the Registrar may be able to determine the fees payable on registration [Section 10 (4) and Table B in First Schedule]. Should the number be exceeded, notice of the increase must be filed with the Registrar of Companies within fifteen days after it was resolved on or took place, the penalty for

* *Attorney-General v. Anglo-Argentine Tramways Company*, [1909] 1 K. B. 677.

default being a fine of £5 per day. The Notice has to be impressed with a fee stamp of 5s. in respect of every fifty Members, or fewer than fifty Members, by which the Membership is increased, the maximum amount—including the sum paid on incorporation—being £20 (Section 44 and Table B of the First Schedule). A filing fee of 5s. is also payable.

INDUSTRIAL AND PROVIDENT SOCIETIES.

These Societies, the name of which must always have the word "Limited" as the last word, can be wound up by the Court under the provisions of Part IV. of the Act of 1908. For this purpose they are regarded as "Companies." They may also be wound up voluntarily in the same manner as Limited Companies, or they may be dissolved voluntarily by the consent of three fourths of the Members, testified by their signatures to an instrument of dissolution.

INVESTIGATION OF AFFAIRS.

Inspectors to investigate the affairs of any Company may be appointed by the Board of Trade. Application must, in the case of a Banking Company, be made to the Board by Members holding at least one third of the Shares issued, and, in the case of any other Company having a Share Capital, by Members holding at least one tenth of the issued Capital. Where there is no Share Capital the application must be made by, at least one fifth of the Members [Section 109 (1)].

The application must be supported by evidence showing that the applicants have good reason for requiring the investigation and are not actuated by malicious motives; and the Board of Trade may require the applicants to give security for payment of the costs of the inquiry before the Inspectors are appointed. All books and documents in the custody or power of the officers and agents of the

Company must be produced to the Inspectors, who may examine the officers and agents on oath in relation to the Company's business. Any officer or agent refusing to produce any book or document or to answer any question relating to the affairs of the Company will be liable to a fine not exceeding £5 in respect of each offence [Section 109 (2) to (5)].

On the conclusion of the investigation the Inspectors report their opinion to the Board of Trade, and a copy of the Report is forwarded by the Board to the Registered Office. If the applicants for the investigation require a copy one will be also delivered to them [Section 109 (6)].

The power to appoint Inspectors is very rarely exercised by the Board of Trade. This is largely owing to the fact that the cost of investigation falls in the first instance on the applicants, although the Board have power, after the inquiry has been concluded, to direct that the cost shall be borne by the Company.

Inspectors may also be appointed by Special Resolution. Such persons have the same powers and duties as if appointed by the Board of Trade, except that they must report to such persons as the Company in General Meeting may direct, instead of to the Board. The penalty incurred by officers and agents refusing to produce books or documents to Inspectors so appointed or to answer any question is the same as if the appointment had been made by the Board of Trade (Section 110).

A copy of any Inspector's report, authenticated by the Company's Seal, is admissible as evidence of the opinion of the Inspector in legal proceedings (Section 111).

The Board of Trade has power to appoint Inspectors for the purpose of ascertaining whether any banking business is carried on by an enemy-controlled Corporation or for the benefit of or under the control of subjects of an enemy State. This power is exercisable during the period of five years immediately after the termination

of the war and thereafter until Parliament otherwise determines. [Trading with the Enemy Acts, 1914 to 1916, and Trading with the Enemy (Amendment) Act, 1918, Section 2 (3)]. (*See also* BANKING COMPANIES.)

JOINT HOLDERS.

Shares may be allotted to two or more persons jointly. Upon the death of a Joint Holder the Shares vest in the survivor or survivors. No Instrument of Transfer has to be registered, but a Certificate of death should be furnished. A corporation may be a Joint Holder [Bodies Corporate (Joint Tenancy) Act, 1899].

It is customary to provide in Articles of Association that the Member whose name is first entered in the Register of Members in respect of the joint holding shall be entitled to receive notices and to vote. Such power would seem to carry with it the right to give a proxy if the Articles provide, as is usual, that votes may be given "either personally or by proxy." It is also general for the Articles to empower any Joint Holder to give effectual receipts for dividends.

Where the Articles of Association provide, in the case of Joint Holders, that the person whose name stands first on the Register shall alone be entitled to vote in respect of the joint holding, the Joint Holders are entitled to require the Company to insert the joint names in reverse order in respect of part of the Shares.*

A frequent provision in the Articles is that Joint Holders of a Share shall be jointly and severally liable to pay all calls in respect thereof. In the absence of this Article, which appears also as Clause 13 in Table A (1908), if judgment is obtained against one of the Joint Holders the others are not liable.†

* *Burns v Siemens Brothers Dynamo Works* No 2, [1919] 1 Ch 225

† *Kendal v. Hamilton*, [1879] 4 App. Ca. 504, 513, 514

Where two or more persons hold Shares in a Private Company jointly, they are, for the purpose of computing the Membership within the meaning of Section 121 (which limits the number of Members of a Private Company to fifty), considered to be one person only. Thus a joint holding and the individual holdings of (say) two Joint Holders count as three Members.

If Joint Holders take part in a requisition calling upon the Directors to convene an Extraordinary General Meeting under Section 66, they must all sign the document or documents unless power for one only to sign on their behalf appears in the Articles.*

See also MEMBERSHIP.

KINDS OF COMPANIES.

Companies may be divided into four classes: namely—

- (a) Companies Limited by Shares, in which the liability of the Members is limited to the amount (if any) unpaid on the Shares held by them;
- (b) Companies Limited by Guarantee, in which the liability of the Members is limited to such amount as the Members undertake to contribute to the assets on winding up;
- (c) Unlimited Companies, in which there is no limit placed on the liability of the Members;
- (d) Associations Not for Profit, which may be registered where the Companies are formed to promote Commerce, Art, Science, Religion, Charity, or any other useful object. "Limited" is not required to be the last word of the name.

Full information will be found under the respective headings.

* Patent Wood Keg Syndicate v. Pearre, [1906] W. N. 164.

LEGAL PROCEEDINGS.

All offences under the Companies Act made punishable by a fine may be prosecuted under the Summary Jurisdiction Acts. In Scotland prosecutions must be at the instance of the Lord Advocate or Procurator Fiscal (Section 276).

The Court may direct that the whole or any part of a fine shall be applied in paying the costs of the proceedings or in rewarding informers (Section 277).

Where a Limited Company is plaintiff or pursuer in any legal proceeding any Judge having jurisdiction may require security for the costs of the defendant if he has reason to believe that the Company would be unable to pay such costs in the event of the defendant being successful (Section 278).

LIMITED.

The word "Limited" is required to be the last word in the Name of a Limited Company (Sections 3 and 4), unless it has been registered as an "Association Not for Profit" under the Licence of the Board of Trade (Section 20). It is also required by Section 5, Sub-Section (5), of The Industrial and Provident Societies Act, 1893, to be the last word in the name of every Society registered under that Act.

"Ld." or "Ltd." are permissible abbreviations on cheques, bills, notices, and documents of a like nature,* but in the Memorandum of Association and the forms to be filed it is essential that the word "Limited" be used in full.

Any person trading under a name of which "Limited" is the last word will, unless duly incorporated with limited liability or registered under the Industrial and Provident

* *F. Stacey & Co. v. Wallis*, [1912] 28 T. L. R. 209.

Societies Act, be liable to a penalty not exceeding £5 a day for every day on which that name has been used by him (Section 282).

See also FOREIGN AND COLONIAL COMPANIES and NAME OF COMPANY.

LIQUIDATOR.

In a voluntary winding up the Company in General Meeting must appoint one or more Liquidators for the purpose of winding up its affairs and distributing the assets, and may fix the remuneration to be paid to him or them. Upon such an appointment being made the powers of the Directors cease, except so far as the Company in General Meeting or the Liquidator sanctions their continuance (Section 186).

Notice of the appointment of the Liquidator must be filed with the Registrar of Companies within twenty-one days thereafter. Failure to do so renders the Liquidator liable on conviction to a fine not exceeding £5 for every day of the default (Section 187).

Within seven days after his appointment the Liquidator must send by post to all persons who appear to him or by the Company's books to be Creditors notice convening a Meeting of Creditors, to be held on a date not less than fourteen or more than twenty-one days after his appointment. With the notice the Liquidator must send forms of general and special proxy in the prescribed form, but he is forbidden to print or insert therein as a proposed proxy the name or description of himself or any other person. He must also advertise notice of the Meeting in the London, Edinburgh, Belfast, or Dublin *Gazette*, according to whether the Company was registered in England or Scotland or Northern Ireland or the Irish Free State, and once at least in two local newspapers circulating in the district where the Registered Office or the principal place of business is situated. The notice must appear in the *Gazette* and one of the newspapers not less than seven

days before the Meeting. No time is specified in regard to the other newspaper, although obviously to be a notice it must appear before the time appointed for the Meeting. The Meeting must be held at such place as is considered by the Liquidator to be most convenient for the majority of the Creditors [Section 188 and Companies (Winding-Up) Rules, 123, 125, 140, 141, and 149A].*

At the Meeting the Creditors have to decide whether application shall be made to the Court for the appointment of any person in the place of or jointly with the Liquidator appointed by the Company or for the appointment of a Committee of Inspection (Sections 188 and 285). A copy of any Resolution (duly certified by the Liquidator) passed at the Meeting must be filed with the Registrar of the Court which would have jurisdiction in the event of the Company being wound up compulsorily (Rules 2, 129, and 149A, and Section 131).

A Resolution is deemed to be passed when a majority in *number and value* of the Creditors present personally or by proxy and voting are in favour of the Resolution. Any persons who do not vote must therefore be ignored. The chair must be taken by the Liquidator or someone nominated by him. With the consent of the Meeting it may be adjourned by the Chairman (Rules 127, 128, 131, and 149A). No right to a casting vote is conferred on the Chairman.

General and Special Proxy forms must be lodged with the Liquidator not later than 4 p.m. on the day before the Meeting, and this requirement should be stated in the notice. Every written part of the forms must be in the handwriting of the person giving the proxies, or of any manager, clerk, or other person in his

* Certain of the Companies (Winding-Up) Rules, 1909, were made to apply to Meetings of Creditors held in pursuance of Section 188 by the Companies (Winding-Up) Rules, 1921, and a new Rule, numbered 149A, was made. The Rules of 1921 and the relevant Rules of 1909 are set out in the Appendix. For the sake of brevity, when further reference is made to the Rules in this portion of the book, they will be given as "Rules —"

regular employment, or of a Commissioner to Administer Oaths. An instrument of General Proxy may be in favour of the Liquidator or of the Creditor's manager or clerk or any other person in his regular employment, and an instrument of Special Proxy may be in favour of the Liquidator or any other person. It is not, however, permissible to appoint a minor a proxy. No voting restriction is imposed on a General Proxy, but it would seem that a Special Proxy may vote only on a Resolution determining that application shall be made to the Court for the appointment of a Liquidator or a Committee of Inspection, or for appointing a Creditor to make the application, and the vote must be given for or against any such Resolution in accordance with the instructions of the appointor. (Rules 140, 142, 143, 147, and 149A).

At least three Creditors entitled to vote must be present or represented at the Meeting in order to constitute a quorum; but if the number of Creditors entitled to vote should be less than three, such number will constitute a quorum. If within half an hour of the time fixed for the Meeting a quorum is not present or represented, the Meeting must be adjourned for a week or for any other period (not being less than seven nor more than twenty-one days) that may be appointed by the Chairman. In the absence of a quorum nothing may be done at the Meeting except the proving of debts and the adjournment of the Meeting (Rules 132 and 149A).

A Creditor has no right to vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. If a Creditor who holds a current Bill of Exchange or Promissory Note as security wishes to vote he must be willing to treat the liability to him thereon of every person who is liable thereon antecedently to the Company as a security, and to estimate the value of such security and for the purposes of voting (but not of Dividend) to deduct it from his proof (Rules 134 and 149A).

The Chairman has power to adjudicate upon the right of a Creditor to vote and the amount in respect of which he should vote, but his decision is subject to appeal to the Court [Rule 149A (2)].

If the Liquidator is not prepared to admit any claim he should require evidence in support of it to be furnished, and if he should not be satisfied with the evidence he should require it to be proved by an affidavit. In the event of his finally rejecting the claim he must serve a notice on the Creditor to that effect, and it will be open to the Creditor to apply to the Court for an Order reversing or varying the Liquidator's decision (Rules 103 and 104). Subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding up by the Court can be entertained unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection (Rule 104); but there is no provision as to the time within which such an application must be made in the case of a voluntary winding up or a winding up subject to the supervision of the Court.

No solicitation by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment should be used (except by direction of a Meeting of Creditors). In the event of such irregularity occurring the Court may deprive the Liquidator of any remuneration for his services (Rules 144 and 149A).

The Chairman must cause Minutes of the Proceedings at the Meeting to be drawn up and fairly entered in a book kept for that purpose, and the Minutes must be signed by him or by the Chairman of the next Meeting. As, however, it is not usual for any further Meeting of Creditors to take place, it is desirable that the Minutes should be signed as early as convenient (Rules 138 and 149A).

A Company being or about to be wound up voluntarily may by Extraordinary Resolution delegate to its Creditors the power of appointing Liquidators, and filling vacancies among the Liquidators, or enter into any arrangement with respect to the powers to be exercised by the Liquidators, and the manner in which they are to be exercised (Section 190).

The Liquidator in a voluntary winding up must pay the debts of the Company, and adjust the rights of the Contributories among themselves. He is empowered to—

- (a) Settle the List of Contributories and make calls upon them, and adjust their rights among themselves;
- (b) Bring or defend actions or other legal proceedings in the Company's name;
- (c) Carry on the business of the Company so far as may be necessary for the beneficial winding up thereof;
- (d) Sell the assets by public auction or private contract;
- (e) Execute documents in the Company's name and use its Seal;
- (f) Prove in the bankruptcy of any Contributory;
- (g) Draw bills of exchange and promissory notes;
- (h) Raise money on the security of the Company's assets;
- (i) Take out letters of administration to deceased Contributories;
- (j) Call General Meetings of the Company for any purpose he thinks fit; and
- (k) Do all such other things as may be necessary for winding up the affairs of the Company and distributing its assets.

(Sections 151, 186, and 194).

All debts are admissible to proof against the Company, estimates being made of those debts or claims which do not bear a certain value (Sections 206 and 207).

The Liquidator may fix a certain day, not being less than fourteen days from the date of the notice, on or before which the Creditors are to prove their debts or

claims, or be excluded from the benefit of any distribution made before the debts are proved. He must then give notice of the day so fixed in some newspaper that he considers convenient, and also advise every person who to his knowledge claims to be a Creditor of the Company and whose name has not been admitted, posting the notice to the last known address or place of abode of each person [Rule 102 of the Companies (Winding-up) Rules, 1909].

The funds must be applied by the Liquidator—First, in paying the costs of the Liquidation, including his own remuneration; Secondly, in paying the debts having priority in law; Thirdly, in paying the ordinary debts; and Fourthly, in distributing any balance among the Contributories.

As to the debts which have "priority in law" see PREFERENTIAL PAYMENTS.

All costs, charges, and expenses properly incurred in a voluntary winding up (including the remuneration of the Liquidator) are payable out of the assets before all other claims (Section 196).

If the Liquidator requires the sanction of the Company by Special or Extraordinary Resolution he may summon General Meetings for the purpose, and he may also call such Meetings for any other purpose he thinks fit (Section 194). The Liquidator or some person nominated by him usually presides at the Meeting.

If the liquidation should continue for more than twelve months the Liquidator must call a General Meeting every year and submit to it an account of his acts and dealings and of the conduct of the winding up during the preceding year (Section 194). Accounts of the Liquidator's Receipts and Payments must also be filed with the Registrar periodically, the first covering the period from the date of his appointment to the end of twelve months from the commencement of the winding up, and the subsequent Accounts covering every succeeding period of six months

[Section 224 and Rule 189 of the Companies (Winding-up) Rules, 1909]. Each Account must be verified by Affidavit. Every Creditor or Contributory has the right upon payment of the prescribed fee to inspect either personally or by his agent the filed Accounts of the Liquidator and to be supplied with a copy or extract [Section 224 (2)].

No Accounts are required if the liquidation is completed within a year, but it should be borne in mind that the dissolution does not take effect until a period of three months has elapsed after the filing of the Return of Final Meeting [Section 195 (4)]. To obviate the necessity for rendering Accounts it is therefore necessary for the Final Meeting to be held and the necessary notification lodged with the Registrar within nine months of the commencement of the liquidation.

The Final Winding Up Meeting must be called by advertisement, which must be published in the *Gazette* at least one month before the date of the Meeting [Section 195 (2)].

The Return of the Final Winding Up Meeting must be filed with the Registrar within one week after holding the Meeting, or liability to a fine of £5 a day is incurred [Section 195 (3)].

If a Liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the Company which have remained unclaimed or undistributed for six months after their receipt, he must pay the same to the Companies Liquidation Account at the Bank of England. A prescribed Certificate of Receipt, which will be an effectual discharge to the Liquidator in respect of the amount paid, will be furnished. Persons entitled to any of the money should apply to the Board of Trade, who will, on a Certificate by the Liquidator that the claims are correct, make orders for payment [Section 224 (4) and (6)].

Any vacancy occurring by death, resignation, or otherwise in the office of Liquidator may be filled up by the

Company in General Meeting, subject to any arrangement with its creditors. The Meeting may be convened by any contributory or the continuing Liquidators, if any (Section 189). The Court is also empowered to appoint a Liquidator, upon application by a contributory, when from any reason whatever there is no Liquidator acting; and to remove a Liquidator on cause shown, and appoint another in his place (Section 186).

In a compulsory winding up the Court may appoint a Liquidator or Liquidators; otherwise the Official Receiver will act (Section 149).

See also COMPROMISE, CONTRIBUTORIES, CREDITORS, and WINDING UP.

MANAGER OR MANAGING DIRECTOR.

It is usual for Articles of Association to authorise the Directors to appoint one of their number to be Manager or Managing Director, stating the Share qualification and providing for considerable powers being given to him. The Directors cannot delegate their powers unless expressly authorised to do so, and therefore in the absence of such a provision an appointment of the kind can only be made by or with the authority of a Resolution of the Company in General Meeting.

If the Official Receiver becomes the Liquidator of a Company and is satisfied that the nature of the business or the interests of the Creditors or Contributories requires it, he may apply to the Court for the appointment of a Special Manager to conduct the business. Such person must render accounts, verified by affidavit, to the Official Receiver. The Manager will be required to give security, the amount of which will be fixed by the Board of Trade, but the Court will determine his remuneration (Section 161 and Winding-up Rule 49).

A Managing Director is not a "clerk or servant" of the Company within the meaning of Section 209 (1) (b), and is accordingly not entitled in a winding up to preferential payment of remuneration in arrear for services rendered to the Company.* His claim will rank *pro rata* with those of the unsecured Creditors.

MARRIED WOMEN.

A married woman may be a Subscriber of the Memorandum of Association, and may also hold the office of Director or any other position.

The husband of a female member married before the 1st January, 1883 (the date on which The Married Women's Property Act, 1882, came into operation), is liable during the continuance of the marriage for Calls on any Shares acquired by her before that date (Section 128). Any Shares, however, registered in the name of a married woman on or after the 1st January, 1883, are deemed to be her separate property unless the contrary is shown, and her husband accordingly is under no liability in respect thereof (Married Women's Property Act, 1882, Section 7).

Partly paid Shares should not, as a general rule, be allotted or transferred to a married woman unless she possesses property of her own, or her husband is made a Joint Holder.

MEETINGS.

A Company Limited by Shares must hold a General Meeting within a period of not less than one month nor more than three months from the date at which it is entitled to commence business (*see* STATUTORY MEETING). As a Private Company is entitled to commence business as soon as it is registered the Meeting in the case of such a Company must be held within three months of the date of its incorporation.

* Newspaper Proprietary Syndicate, [1900] 2 Ch. 349.

Every Company must hold at least one General Meeting in each calendar year, at which the ordinary business is transacted. Subsequent Meetings must be held within fifteen months of the last preceding General Meeting (*see* ANNUAL MEETING).

Meetings for the transaction of special business may also be held as occasion may arise (*see* GENERAL MEETINGS).

The Directors should meet whenever necessary (*see* DIRECTORS' MEETINGS).

Minutes must be kept of the proceedings at all Directors' and General Meetings (*see* MINUTES).

See also CHAIRMAN, NOTICES, PROXIES, QUORUM, and VOTES.

MEMBERSHIP.

The Subscribers of the Memorandum of Association, and all other persons who agree to become Members and whose names are entered in the Register, are Members of the Company (Section 24).

The minimum number of Members is Two in the case of a Private Company, and Seven in the case of a Public Company (Section 2). A Corporation may be a Member, and may be a Subscriber to the Memorandum and Articles, but cannot be included in the minimum of two or seven persons required to subscribe the Memorandum and Articles of Private or Public Companies respectively. A "Private Company" cannot have more than Fifty Members, exclusive of present and past employes. Shareholders who were but have ceased to be in the service of the Company must be included when calculating the Membership unless they were Members during the time of their employment and have continued to be Members since the determination of the employment (Section 121 and Companies Act, 1913). There is no maximum limit to the number of Members of a Public Company.

If a Company carries on business for more than six months with less than the minimum Membership, every Member who is cognisant of the fact will be liable for the payment of the whole of its debts contracted during such period (after the six months) as the Company carries on its business without the prescribed minimum number of Members (Section 115), and the Company may be wound up by the Court (Section 129). A Private Company which fails to comply with the special provisions in its Articles required to constitute it a Private Company forfeits (amongst the other advantages set out on pp. 172 and 173) the privilege of carrying on business with less than seven Members, and its minimum Membership becomes the same as if the Company were a Public one (Companies Act, 1913).

See also REGISTER OF MEMBERS and INCREASE OF MEMBERSHIP.

MEMORANDUM OF ASSOCIATION.

Every Company must have a Memorandum of Association, the original of which is filed with the Registrar at the time of Incorporation (Sections 2 and 15).

In the case of a Company Limited by Shares the document is required by Section 3 to contain Clauses stating—

1. The Name of the Company, with "Limited" as the last word of its name;
2. The part of the United Kingdom, whether England, Scotland, or Ireland, in which the Registered Office is to be situate;
3. The Objects of the Company;
4. That the Liability of the Members is Limited;
5. The amount of Share Capital with which the Company proposes to be registered, and the division thereof into Shares of a fixed amount.

The requirements of Clause 1 are dealt with fully under NAME OF COMPANY (*see* p. 155).

If the Company is to be registered in Ireland, Clause 2 of the Memorandum must now show whether the Registered Office will be situate in Northern Ireland or in the Irish Free State. Clause 2 is further dealt with under REGISTERED OFFICE (*see* p. 197).

The third Clause should set out the objects very clearly and comprehensively, as no business, however desirable, may be carried on that the document does not either expressly or impliedly authorise.

To avoid the risk of being held personally liable for any loss the Company may sustain, Directors should be careful to assure themselves that no business outside the scope of the Memorandum is being carried on by the Company.

In framing the document it must also be borne in mind that certain restrictions are placed upon the powers of a Company, and that the Registrar will decline to accept the Memorandum of a proposed Company if it is being formed for some unlawful object or if any prohibited objects are included.

Life or Industrial Assurance business, or Accident, Employers' Liability, or Fire Insurance business, Bond Investment business, or any Re-insurance of risks in such classes of business cannot, for example, be carried on unless £20,000 has been deposited with the Paymaster-General in respect of each class of Insurance business undertaken by the Company, subject, however, to a maximum deposit of £60,000 (*see* p. 23). If power is taken in the Memorandum of Association of an ordinary trading Company to carry on Insurance business generally, the Registrar requires the objects to be qualified by the following proviso:—

“Provided that nothing herein contained shall empower the Company to carry on the business of Assurance or to grant annuities within the meaning of The Assurance Companies Act, 1909, as extended by The Industrial Assurance Act, 1923, or to reinsure any risks under any class of Assurance business to which those Acts apply.”

Registration of a Trade Union under the Companies Act is forbidden by The Trade Union Act, 1871, and any such registration is declared to be void. The statutory definition of the expression "Trade Union" is:—"Any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictions on the conduct of any trade or business." The applicable proviso where the Memorandum is wide enough to include the objects of a Trade Union is as follows:—

"Provided always that the Objects of the Company shall not extend to any of the purposes mentioned in Section 16 of The Trade Union Act Amendment Act, 1876."

In the interest of public policy the Registrar declines to pass the Memorandum of a Shipping Company if power is taken to sail any vessel under a foreign flag. Moreover, if it appears that the control of a Shipping Company will be vested in Directors who are not British subjects the Registrar requires the following proviso to be included in the Memorandum:—

"Provided that nothing herein contained shall empower the Company to acquire any interests in British Ships contrary to the provisions of the Merchant Shipping Acts or The British Ships (Transfer Restriction) Acts, 1915 and 1916."

The Memorandum must be signed by not less than seven Subscribers in the case of a Public Company, or two if the Company is to be registered as a Private one, and their signatures must be duly attested. Each Subscriber to the Memorandum must write opposite his name the number of Shares he agrees to take, one being the minimum [Sections 3, 4, and 5 (*see p. 236*)].

When registered, the Memorandum and Articles bind the Company and the Members as if they had been respectively signed and sealed by the Members, and

contained covenants on the part of each Member, his heirs, executors, and administrators, to observe all the provisions contained therein. All money payable by any Member to the Company under the Memorandum and Articles is a debt due from him to the Company, and in England and Ireland is of the nature of a specialty debt (Section 14). Accordingly the Statute of Limitations does not operate as a bar to legal proceedings for recovery until the expiration of twenty years.

The Company is bound to send to any Member, at his request, a copy of the Memorandum (and of the Articles, if any). For each copy a charge of 1s., or any less sum that the Company may prescribe, may be made (Section 18).

The contents of the Memorandum must be included in and form part of any prospectus issued by the Company not more than one year from the time it became entitled to commence business; but this requirement does not apply to a prospectus which is published as a newspaper advertisement (Section 81).

Subject to confirmation by the Court, the provisions of the Memorandum with respect to the Objects may be altered by Special Resolution in order to enable the Company—

- (a) To carry on its business more economically or more efficiently; or
- (b) To attain its main purpose by new or improved means; or
- (c) To enlarge or change the local area of its operations; or
- (d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the Company; or
- (e) To restrict or abandon any of the Objects specified in the Memorandum.

(Section 9).

Before confirming the alteration the Court has to be satisfied that sufficient notice has been given to every Debenture Holder and to every person whose interests will be affected by the alteration. The consent of every Creditor who is entitled to object to the alteration and who signifies his objection must also be obtained, or his debt or claim must be discharged or determined or setured to the satisfaction of the Court. An office copy of the Order confirming the alteration, together with a printed copy of the Memorandum, as altered, has to be filed within fifteen days from the date of the Order, and the Registrar thereupon issues a Certificate of Registration of the amended Objects (Section 9).

The document may also be altered pursuant to Section 3 of The Mortgage Debenture Act, 1865, which provides that a Company already constituted under The Companies Act, 1862, for the purpose of making advances on real securities, and the Memorandum of which includes but is not limited to the objects specified in that section, may alter its Memorandum by Special Resolution for the purpose of limiting its objects and business to those so specified. The Companies (Consolidation) Act, 1908, does not affect the power so conferred (Section 292).

The Objects set out in the Memorandum are unalterable except in accordance with the foregoing statutory provisions.

The Memorandum of a Company Limited by Guarantee must include the first four Clauses set out on p. 140, and the fifth Clause must state that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceases to be a Member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the Contributories among themselves, such amount as may be required, not exceeding a specified amount. If the

Company has a Share Capital the Memorandum must also state the amount and the number of Shares into which it is divided, and each Subscriber must state the number of Shares he takes (Section 4).

. In the case of an Unlimited Company the Memorandum must contain the first three of the Clauses specified. Where there is a Share Capital the amount must be stated in the Articles, but it is not required to be stated in the Memorandum. Each Subscriber to the Memorandum must, however, write opposite his name the number of Shares he takes (Section 5).

For further information on this subject reference should be made to GORE-BROWNE'S "Handbook on the Formation, Management, and Winding Up of Joint Stock Companies."

MINIMUM SUBSCRIPTION.

The "Minimum Subscription" is the amount (if any) fixed by the Memorandum or Articles and required to be named in the Prospectus of a Company offering Shares to the public for subscription, upon which the Directors may proceed to allotment. Where no invitation to subscribe for Shares is issued the amount must be named in a Statement in Lieu of Prospectus. If no such amount is fixed by the Memorandum or Articles and named either in the Prospectus or in a Statement in Lieu of Prospectus, the Minimum Subscription is the whole amount of the Share Capital for which the public are invited to subscribe or (where no invitation is issued to the public) the whole of the Share Capital which is available for issue subject to payment wholly in cash (Section 85).

Any amount payable otherwise than in cash must not be included in the Minimum Subscription, and the sum payable on application must not be less than five per cent. of the nominal amount of each Share [Section 85 (2), (3), and (7)].

In the case of the first offer of Shares to the public by a Company issuing a Prospectus, no Shares may be allotted unless the Minimum Subscription has been subscribed and the sum payable on application has been paid. Where no Prospectus is issued the Minimum Subscription must be subscribed and not less than five per cent. of the nominal amount of each Share payable in cash must be received by the Company before any allotment of Shares payable in cash is made [Section 85 (1) and (7)].

An allotment of Shares in contravention of the foregoing provisions although not void is voidable, and may be set aside at the instance of the applicant within one month after the Statutory Meeting, but not later. This provision holds good even where the Company has in the meantime gone into liquidation. Directors are also liable to compensate the Company and the allottee respectively for any loss, damage, or costs sustained owing to the irregular allotment, but proceedings for the recovery of such sums may not be commenced after the expiration of two years from the date of allotment [Section 86 (1) and (2)].

Where the conditions specified have not been complied with on the expiration of forty days after the first issue of the Prospectus, all money received from applicants must be repaid immediately (without interest). If it has not been repaid within forty-eight days the Directors will be jointly and severally liable to repay the money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day. A Director, however, will escape liability if he proves that there has been no misconduct or negligence on his part [Section 85 (4)].

A Company cannot contract itself out of the above provisions of the Act, for it is expressly stated that any condition requiring applicants to waive compliance with these requirements will be void [Section 85 (5)].

The foregoing provisions do not apply to Private Companies [Section 85 (7)].

MINUTES.

Companies are required to cause Minutes of all proceedings at General Meetings and at Meetings of the Directors or Managers to be entered in books kept for that purpose. If purporting to be signed by the Chairman of the Meeting at which the proceedings were had or by the Chairman of the next Meeting (of the Members or the Directors, as the case may be), Minutes will be evidence of the proceedings, and it is therefore important that complete records of the proceedings of Meetings should be made.*

Until the contrary is proved every Meeting in respect of the proceedings whereof Minutes have been so made is deemed to have been duly held and convened, and all proceedings thereat to have been duly had (Section 71).

No discussion should be allowed upon the Minutes, except as to their accuracy as a record of the business transacted.

It is advisable to keep two books, so that one may contain a record of the proceedings at Directors' Meetings and the other a record of the proceedings at Shareholders' Meetings. Members are usually allowed access to the General Minute Book, but they are not entitled to see the Directors' Minutes.

A Secretary should also have a Rough Minute Book in which to enter notes of the Meetings he attends. The inadvisability of making on odd slips of paper memoranda from which to prepare Minutes is obvious.

Liquidators of Companies being wound up by the Court must keep Minutes of the proceedings of the various

* In a case where the Articles required any disclosure at a Board Meeting by a Director of his interest in any contract with the Company to be entered in the Minute Book and the Secretary neglected to make the requisite entry, it was held that the Director could not recover on his contract with the Company (*Toms v Cinema Trust Co*, [1915] W. N. 29).

Meetings held, and any Creditor or Contributory may (subject to the control of the Court) either by himself or his agent inspect such books (Section 156).

In a voluntary winding up the Chairman of the Meeting of Creditors held pursuant to Section 188 must cause Minutes of the proceedings at the Meeting to be drawn up and fairly entered in a book kept for that purpose, and the Minutes must be signed by him or by the Chairman of the next Meeting of Creditors (Rules 138 and 149A). As, however, the Creditors do not usually meet a second time, it is advisable for the Chairman of the original Meeting to sign the Minutes of the proceedings thereat.

MONEY-LENDING COMPANIES.

A Company carrying on the business of Money-lending is required to register under The Money-lenders Act, 1900. Registration is effected by filing with the Registrar a prescribed Form duly filled up and impressed with a fee stamp of £1. At the expiration of three years such registration ceases to have effect, but it may from time to time be renewed for the same period.

A Company carrying on a Pawnbroking business, or Banking or Insurance business, or any business not having for its primary object the lending of money, in the course of which and for the purposes whereof it lends money, is not required to register. In certain circumstances the Board of Trade may order that a Company be exempted from registration.

Section 2 of The Money-lenders Act, 1911, prohibits the adoption of the word "Bank," or any other word or phrase suggesting that banking business is carried on, as part of the registered name of a Money-lender, and provides that, where the word has been already registered, the name shall be removed from the Register.

MORTGAGES AND CHARGES.

Every Mortgage or Charge created by a Company registered in England or Ireland requires registration within twenty-one days after the date of its creation if it is either—

- (a) A Mortgage or Charge for the purpose of securing any issue of Debentures; or
- (b) A Mortgage or Charge on uncalled Share Capital; or
- (c) A Mortgage or Charge created or evidenced by an instrument which, if executed by an individual, would require registration as a Bill of Sale; or
- (d) A Mortgage or Charge on any land, wherever situate, or any interest therein; or
- (e) A Mortgage or Charge on any book debts of the Company; or
- (f) A Floating Charge on the undertaking or property of the Company.

If not so registered the instrument will be void against the Liquidator and any Creditor of the Company so far as any security on the Company's property or undertaking is thereby conferred, but without prejudice to any contract or obligation for repayment of the money secured, which becomes immediately payable [Section 93 (1)].

A Judge of the High Court on being satisfied that the omission to register, within twenty-one days was due to accident or inadvertence or some other sufficient cause, or is not of a nature to prejudice the position of Creditors or Shareholders of the Company, may order that the time be extended. Such Orders are invariably expressed to be without prejudice to any rights that may have intervened prior to the time when such charge shall be actually registered.

It is to be noted that registration of Mortgages created by Companies, incorporated in Scotland is not required by the Companies Acts; but such Companies must keep

a Register of Mortgages and permit inspection as in the case of English and Irish Companies.

Where a negotiable instrument is given to secure the payment of any book debts of a Company the deposit of the instrument for the purpose of securing an advance to the Company is not, for the purposes of the Act, a Mortgage or Charge on those book debts; and the holding of Debentures entitling the holder to a Charge on land is not deemed an interest in land [Section 93 (1)].

In the event of a Company purchasing property subject to a Mortgage the Conveyance of the equity of redemption does not require registration, as no Charge is created by the Company. Accordingly the amount of the Mortgage will not appear in the Annual Return, but particulars thereof must be entered in the Register of Mortgages kept in pursuance of Section 100.

Where a Mortgage on any land or premises of a Company has been drawn "by way of statutory Mortgage" in the form given in Part I. of the Third Schedule to The Conveyancing Act, 1881, and such Mortgage is subsequently transferred—the deed of transfer being drawn "by way of statutory transfer of Mortgage"—in accordance with Form C of Part II. of the said Third Schedule (the Company being a party to the deed and being expressed to convey and confirm the property as beneficial owner to the transferee) and thus operating not only as a statutory transfer of Mortgage but also as a statutory Mortgage by virtue of Section 27 (4) of that Act—the Registrar of Companies requires such transfer to be registered as a new Charge.

Where the original Mortgage and the transfer of Mortgage are both drawn in the ordinary legal form (but not in the statutory forms set out in Parts I. and II. of the said Third Schedule to the Conveyancing Act, 1881) the deed of transfer apparently does not require registration; but in practice the Registrar accepts the deed for

registration if the Company is a party thereto and is expressed to convey and confirm the property as beneficial owner to the transferee.

In order to effect registration the Mortgage or Charge has to be produced, duly stamped, to the Registrar, accompanied by Particulars of the Charge on the prescribed Form, the latter being filed with him. The fee payable on registration is 10s. if the amount secured does not exceed £200, and £1 if it exceeds that sum. A Certificate of Registration is granted by the Registrar and is conclusive evidence that the statutory requirements as to registration have been complied with [Section 93 (5)], and this is so even if the Particulars furnished are defective.*

In the case of a Mortgage or Charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, a copy of the instrument, verified in the prescribed manner, may be produced to the Registrar in place of the original, the time allowed being twenty-one days after the date on which the instrument or copy could in course of post, if dispatched with due diligence,* have been received in the United Kingdom [Section 93 (1)]. By an Order dated the 29th March, 1909, the Board of Trade have prescribed that any copy of such an instrument shall be certified to be a true copy under the Seal of the Company, or under the hand of some person interested therein otherwise than on behalf of the Company.

It is the duty of the Company to cause Particulars of every Mortgage or Charge created by it and of issues of Debentures of a series requiring registration to be filed with the Registrar, but registration may be effected on the application of any person interested. Any such person

* *National Provincial & Union Bank of England v Charnley*, [1924] K. B. 431

effecting registration is entitled to recover from the Company the amount of the fees paid to the Registrar [Section 93 (7)].

Any Company which neglects to file the prescribed Particulars, and every Director or other person knowingly a party to the default, will be liable on conviction to a fine not exceeding £50 a day, unless registration has been effected by some other person. Subject to this provision, default in complying with any of the requirements as to registration renders the Company and every Director, Manager, and other Officer knowingly and wilfully authorising or permitting the default, liable on summary conviction to a fine not exceeding £100, without prejudice to any other liability [Section 99 (1) and (2)].

A copy of every instrument creating any Mortgage or Charge requiring registration must be kept at the Registered Office. In the case of a series of uniform Debentures a copy of one Debenture will, however, suffice [Section 93 (9)].

Every Limited Company is also required to keep a Register of all Mortgages and Charges, specifically affecting its property, setting out in each case a short description of the property and the amount secured, and (except in the case of securities to bearer) the names of the Mortgagees or the persons entitled to the Charge. Neglect to make any such entry renders Directors and other Officers liable to a fine not exceeding £50 (Section 100), but the validity of the instrument is not affected by the default.

The copies of the instruments requiring registration and the Register of Mortgages must be open at all reasonable times to the inspection of creditors or Members without charge. Any other person is entitled to see the Register on payment of a fee not exceeding 1s. for each inspection. Any Officer declining to allow inspection, and every Director and Manager permitting the refusal, will

be liable to a fine not exceeding £5, and to a further fine not exceeding £2 for every day during which the refusal continues. In addition thereto the Court may order an immediate inspection if the Company was registered in England or Ireland (Section 101).

The Registrar also keeps a Register of Registered Mortgages and Charges, with a chronological index, which may be inspected upon payment of a search fee of 1s. [Sections 93 (2), (8), and 98].

A Floating Charge created within three months of the commencement of a winding up is only good for the amount paid to the Company at or after the time the Charge was created (with interest at Five per cent. per annum) unless the Company was then solvent (Section 212). The claims of the Holders of a Floating Charge are, moreover, always postponed to those of the Creditors entitled to preferential payment. (See PREFERENTIAL PAYMENTS.)

On a registered Mortgage or Charge being paid or satisfied a Memorandum of Satisfaction (on the prescribed Form, impressed with a 5s. fee stamp) should be filed with the Registrar. The Memorandum has to be verified by Statutory Declaration by a Director of the Company and the Secretary. Registration is optional, and may be effected at any time, but it is the obvious interest of the Company to record the fact that its indebtedness has been diminished or discharged.

When a Memorandum of Satisfaction is filed the Registrar records the fact on his Register (Section 97). A copy of the Memorandum will be furnished by him upon payment of a search fee of 1s. and the prescribed fee of 5s. (Order of Board of Trade dated 28th December, 1900).

A Reconveyance, Release, Discharge, Surrender, or Renunciation of a Mortgage or other security must be stamped with duty at the rate of 6d. for every £100 or

part of £100; but a Receipt endorsed on an instrument acknowledging payment of the principal and interest secured is exempt from duty (Stamp Act, 1891, *Schedule*).

When endeavouring to ascertain the position of a Company with regard to Mortgages and Charges it should always be borne in mind that the Official File or Register may be defective on some points and the Company's own Register on others. When this is the case it is only by combining the particulars obtainable from both that a complete record can be secured.

Section 93 does not, for instance, require the following to be registered, *unless they are given for the purpose of securing an issue of Debentures or are comprised in a Floating Charge*:—

- A mortgage or charge on a Call made, but not yet paid.
- A mortgage or charge on a Contract, Concession, Patent, Copyright, or other *choses in action*.
- A deposit (as security for a loan) of Stocks, Shares, Securities, Bills of Exchange, Delivery Warrants, or other mercantile documents.
- Liens arising in the ordinary course of business and specifically affecting property of the Company.
- Rights acquired under a Garnishee Order.

Any of these Charges against the property of a Company might exist without being disclosed on the File. They should, however, all be recorded in the Company's own Register as being Charges "specifically affecting property of the Company."

An "agreement to give a Charge when called upon to do so," if so expressed as to create a present equitable right, must be registered if the Charge when given would fall within any of the categories set out in Section 93; but if it is so expressed as to be merely an agreement that in some future contingency a security shall be created—and thus confers no *present* right—it need not be registered; provided, of course, that the issue of the security is not

purposely held over to avoid the necessity of registering the security and of disclosing to Creditors the fact that there is an incumbrance.*

The Annual Return filed at the Companies Registry must show the total of all outstanding Charges, as defined by Section 93 of the Act, whether or not such Charges were created before the 1st July, 1908.

As regards the Company's own Register, Section 100 does not *require* particulars to be recorded therein of Debentures with a Floating Charge only, for such a Charge does not specifically affect property of the Company†; nor of a Charge on uncalled Capital, for uncalled Capital has been held to be a "power" or "right," and not to be included in the term "property."‡ These should, however, appear on the file at the Companies Registry, and copies of the instruments creating such Charges must be kept by the Company and be open to the inspection of Creditors and Members.

See also BORROWING, DEBENTURES, REGISTER OF MORTGAGES AND CHARGES, SEARCHES, and TRUST DEEDS.

NAME OF COMPANY.

It is of great importance that the Name of a Company should be correctly stated in every Notice or Document issued by the Company. The Name should always be given in full in order to strictly comply with the Act, although the abbreviation "Ltd." for "Limited" on a Bill of Exchange has been held to be permissible.§

"Limited" must be the last word in the name of a Company registered with limited liability (Sections 3 and 4), unless the Company has, with the Licence of the

* Jackson and Bassford, Limited, [1906] 2 Ch 467.

† Illingworth v. Houldsworth, [1904] A. C. 355.

‡ Russian Spratt's Patent Co., [1898] 2 Ch. 132.

§ F Stacey & Co. v. Wallis, [1912] 28 T L R 209.

Board of Trade, been registered as an Association Not for Profit. It is required also by Section 5 (5) of The Industrial and Provident Societies Act, 1893, to be the last word in the name of every Society registered under that Act.

A Company may not be registered under the name of one already registered or so nearly resembling that name as to be calculated to deceive, except where the existing Company is in the course of being dissolved and signifies its consent in the manner required by the Registrar [Section 8 (1)]. In such a case the Consent of the Liquidator on the prescribed Form, impressed with a fee stamp of 5s., must be filed with the Registrar before the new Company can be registered.

If a Company, through inadvertence or otherwise, is without such consent registered with a name identical with that of another Company or resembling it too closely, it may, with the sanction of the Registrar, change its name [Section 8 (2)].

Where under a scheme for the reconstruction of a Company a new Company is being formed to acquire the assets and undertaking of the existing Company and it is desired to effect registration of the new Company before the commencement of the liquidation of the old Company, the Registrar of Companies will allow the new Company to be registered by the same title as that of the existing Company, with the addition only of the year of incorporation, provided that the following conditions are complied with: (a) the Objects Clause of the Memorandum of Association shows the principal object of the new Company to be the acquisition of the undertaking of the old Company; (b) the draft Agreement for the sale of the undertaking of the old Company to the new Company is produced to the Registrar; (c) the old Company gives its consent under seal to the registration of the new Company by the proposed title; and (d) the old Company furnishes evidence that a Special Resolution for winding up has been

passed by the requisite majority at the first Meeting, and undertakes to confirm such Resolution within the prescribed period. Where special circumstances exist, the Registrar will waive compliance with the last-mentioned condition if furnished with an undertaking by the old Company to go into liquidation within two months after the registration of the new Company is effected.

"King," "Queen," "Emperor," "Crown," "Royal," "Imperial," and similar words cannot be adopted without the consent of the Home Secretary, which is only granted upon very cogent reasons being advanced. It is also the practice of the Registrar to decline to allow a Company to be registered with a name implying that it is in some way connected with the Government, and he does not now pass the word "Empire," or even "Windsor," without being satisfied as to the reasons for including it in the proposed name; but no objection is taken to such words as "Rex" or "Regina." A money-lending Company may not use the word "Bank" in its title or any other word or phrase suggesting that it carries on the business of banking (Money-lenders Act, 1911, Section 2).

A Company may not in its name use the word "Anzac" or any word closely resembling it without the authority of a Secretary of State given on the request of the Government of the Commonwealth of Australia or of the Dominion of New Zealand. This prohibition applies notwithstanding that the word forms part of any trade mark or of the name of any Company or Society or other body which was registered before the passing of the Act (18th December, 1916) ["Anzac" (Restriction on Trade Use of Word) Act, 1916, Section 1].

Before The Dentists Act, 1921, a Company could not be registered under a name including the word "Dentist" or implying that it possessed dental qualifications. Under that Act a Company may, subject to certain conditions, carry on the business of dentistry, provided the majority

of the Directors and all the operating staff are registered Dentists, and it would seem, therefore, that the word "Dentist" might be included in the name of such a Company. It may, however, carry on no business other than dentistry or a business ancillary thereto.

The words "Geneva Cross" or "Red Cross" for business purposes are prohibited by The Geneva Convention Act, 1911, in accordance with the Geneva Convention, to which the British Government was a party.

Every Limited Company (except an Association Not for Profit) is required to—

- (a) Paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) Have its name engraven in legible characters on its Seal; and
- (c) Have its name mentioned in legible characters in all Notices, Advertisements, and other official publications, and in all Bills of Exchange, Promissory Notes, Endorsements, Cheques, and Orders for money or goods purporting to be signed by or on behalf of the Company, and in all Bills of Parcels, Invoices, Receipts, and Letters of Credit.

[Sections 20 and 63 (1)].

If the name is not painted or affixed as mentioned in paragraph (a), the Company and every Director and Manager who knowingly and wilfully authorises or permits the default will be liable to a fine not exceeding £5 a day [Section 63 (2)].

If any Director, Manager, or other Officer of a Company contravenes any of the provisions set out in paragraphs (b) and (c) he will be liable to a fine not exceeding £50, and will further be personally liable to the holder of any Bill of Exchange, Promissory Note, Cheque, or Order in respect of which he has failed to comply with the Act, unless the amount is paid by the Company [Section 63 (3)].

Every Company registered since the 22nd November, 1916, and every Foreign Company which since that date has established a place of business in the United Kingdom, is required to show the names of its Directors in all trade catalogues, trade circulars, show cards, and business letters, on or in which the name of the Company appears, and which are issued or sent out by the Company to any person in any part of His Majesty's Dominions [Companies (Particulars as to Directors) Act, 1917, Section 2 (2)].
See also DIRECTORS.

A Colonial or Foreign Company which uses the word "Limited" as part of its name, and has a place of business in England, must in addition to complying with the requirements imposed upon Foreign and Colonial Companies generally (as to which *see* FOREIGN AND COLONIAL COMPANIES) state its name correctly, together with the name of the country in which it was incorporated, in all prospectuses, notices, advertisements, and other official publications of the Company. The full name of the Company and the country of origin must also be conspicuously displayed on every place where the Company carries on business in the United Kingdom (Section 274).

A Company may by Special Resolution, and with the approval in writing of the Board of Trade, change its name (Section 8). Before the Members are called together to pass the Resolution inquiry should be made as to whether any other Company is in existence bearing a name similar to the one proposed. Having ascertained that the name is not already appropriated the proposed change should be submitted to the Board of Trade for its provisional approval. The Board will not sanction a change where the proposed name is identical with or closely resembles that of an existing Company, or if it appears that the carrying on of a business not authorised by the Memorandum of Association is contemplated, or that the main object as therein expressed will be departed from.

It is also the present practice of the Board to withhold its sanction to a change of name by a Company which was registered before the 22nd November, 1916 (and therefore not under obligation to publish the names of its Directors under The Companies (Particulars as to Directors) Act, 1917, Section 2 (2)), where the proposed name does not either indicate the nature of the business or comprise the names of the persons who are mainly interested in or control the Company.

When the provisional approval of the Board of Trade has been obtained, the appropriate Special Resolution should be passed and confirmed by the Company, and a printed copy thereof filed with the Registrar. On the lodging of a further printed copy of the Resolution with the Board of Trade, its formal sanction will be granted, and this should be filed with the Registrar, who will thereupon issue his Certificate that the name has been changed. The Common Seal should then be destroyed and a new one engraved, and no document bearing the old name should be issued. It may also be desirable to call in the old Share Certificates and issue fresh ones bearing the new name.

A change of name does not affect any rights or obligations of the Company [Section 8 (5)].

NOTICES.

Notice of a General Meeting must be given as provided by the Articles of Association, or by Table A if there are no Articles. Seven days' notice is almost invariably required, and if it is provided that notices served by post shall be deemed to be served at the time when they would be delivered in the ordinary course of post (as in Table A, 1862), notices must be posted at least nine days before the Meeting, as seven *clear* days must in such a case intervene between the date of giving the notice and the date of the Meeting. But if

the Articles provide that the seven days' notice shall be exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which it is given, the notices need only be posted seven days before the Meeting if they are deemed to be served at the time of posting (as in Table A, 1906), or eight days before the Meeting if they are deemed to be served at the time when they would be delivered in the ordinary course of post (as in Table A, 1908). It is advisable, however, to give more than the minimum notice wherever possible.

If any Member should reside in a remote part of the United Kingdom the notice must be sent to him one or two days earlier than is stated in the preceding paragraph, where service is deemed to be effected at the time when the notice would be delivered in the ordinary course of post.

Articles frequently do not require notice of adjourned Meetings to be given, but it is customary to send notice of an adjournment for the information of those Members not present at the first Meeting. Table A (1908) requires notice to be given if the adjournment is for more than ten days, but not otherwise.

Notice of a General Meeting must be given by duly authorised persons; otherwise the business transacted may be invalid. The purpose of the Notice is to give every Shareholder the opportunity of being present; but Articles usually state that accidental omission to give the notice to or its non-receipt by any Member shall not invalidate the proceedings at the Meeting.

If notice has been duly given that a Meeting will be held on a certain date a postponement of the Meeting cannot be effected by a later notice unless the Articles authorise such a course* but must be obtained by holding the Meeting on the date mentioned in the original intimation and adjourning it in accordance with the provisions of the Articles.

* *Smith v. Paranga Mines*, [1906] 2 Ch. 193.

Where the Articles are silent as to the giving of Notices, and Table A does not apply, or in the event of there being no Directors acting and no Articles dealing with the dilemma thus caused, five Members may call a Meeting (under Section 67) on seven days notice in writing, served on every Member in the manner in which Notices are required to be served by Table A of 1908.

If the Directors do not proceed to cause a Meeting to be held within twenty-one days after the receipt of a requisition duly made by the holders of not less than one tenth of the issued Share Capital upon which no Calls or other sums then due are in arrear, the requisitionists, or a majority of them in value, may themselves convene the Meeting. The objects of the Meeting must be specified in the requisition. If any Resolution passed requires confirmation, the requisitionists, or a majority of them in value, may also convene the second Meeting should the Directors not do so (Section 66).

Under Clause 46 of Table A (1908) any two Members may convene the Annual General Meeting if the Directors fail to do so within the prescribed time.

Notice of intention to nominate some person to the office of Auditor, other than the retiring Auditor, must be given to the Company not less than fourteen days before the Annual Meeting, and the Company must notify the retiring Auditor and also the Members not less than seven days before the Meeting. If, however, after the serving of the Notice on the Company the Annual Meeting is called for a date within fourteen days thereafter, the Notice, though not served within the required time, is to be deemed to be properly given, and the Notice to be given by the Company may be given at the same time as the Notice convening the Meeting [Section 112 (4)].

Articles usually provide that the ordinary business to be transacted at the Annual Meeting shall include

receiving the Directors' and Auditors' Reports, sanctioning a Dividend, considering the balance sheet and accounts of the Company, electing or re-electing Directors and Auditors, and fixing the Auditors' remuneration, and that all other business is to be regarded as special. The Notices convening Meetings for the consideration of special business must state the general nature of the business. If the Articles are silent on the point, Notice must be given of all business with which it is proposed to deal, otherwise any proceedings at the Meeting will be invalid.

The Notice convening the first Meeting for the purpose of dealing with a proposed Special Resolution altering the Articles of Association must, if any material alteration is contemplated, clearly explain the nature and effect of the alteration. A notice will not be properly given of a Meeting at which it is intended to propose important alterations in the Articles (*e.g.* increasing the remuneration or borrowing powers of the Directors) if the notice merely states that new Articles, which may be seen at the Registered Office of the Company, will be submitted for adoption.*

A notice relating to the intention of the Registrar to strike the name of a Company off the Register may be addressed to the Company at its Registered Office, or if no office has been registered to some Director or Officer, or if there is no such person whose name and address are known to the Registrar to each of the Subscribers to the Memorandum of Association [Section 242 (7)].

In the case of a reconstruction, the Notice convening the Meetings required for the passing of the necessary Special Resolution must state that the proposed sale to another Company will be made under the provisions of Section 192.† Members who dissent from the suggested

* *Normandy v. Ind, Coope & Co.*, [1908] 1 Ch. 84.

† *Imperial Bank of China v. Bank of Hindustan*, [1868] 6 Eq. 91.

sale may exercise the rights conferred on them by that Section, with the requirements of which they should carefully and exactly comply.

Notices to Companies which are incorporated outside the United Kingdom, but have a place of business within the United Kingdom, must be given to the persons whose names and addresses are filed with the Registrar as being authorised to receive Notices on behalf of such Companies (*see* p. 103).

See also ANNUAL MEETING, GENERAL MEETINGS, MEETINGS, STATUTORY MEETING, &c.

PAYMENT OF INTEREST OUT OF CAPITAL.

Where Shares are issued for the purpose of raising money to defray the expenses of construction of any works or buildings, or to provide plant which cannot be made profitable for a lengthy period, the Company may pay interest on so much of the Share Capital as is paid up, and may charge the interest to Capital as part of the cost of construction. Authority to make such payment must be contained in the Articles or be taken by Special Resolution (Section 91).

The power is safeguarded against use in unauthorised circumstances, as it cannot be exercised without the sanction of the Board of Trade, who are empowered to make any necessary inquiry at the Company's expense. Full information must be furnished to the Board, together with a copy of the Memorandum and Articles and the Prospectus (if any). The period during which interest may be paid is determined by the Board, but in no case may it extend beyond the close of the half year next after the half year during which the works or buildings have been completed or the plant provided. The rate of interest must not exceed four per centum per annum.

Except where made under the foregoing power, payment out of Capital of Interest on the amounts paid up on a Company's Shares otherwise than in advance of Calls is illegal, as it would be in effect a reduction of Capital not authorised by the Act.

The accounts of the Company must show the Share Capital on which interest is paid out of Capital, and also indicate the rate of such interest (Section 91).

PENALTIES.

Companies are frequently fined for default in making Annual and other Returns. The following is the last list of convictions officially issued as a warning to Directors and other Officers:—

Place and Date of Conviction	Nature of Offence	Penalty
Westminster Police Court. 24th Jan., 1916.	Failure to hold a General Meeting during the year 1915, and to notify a change which had occurred in the Directorate, contrary to Sections 64 and 75 respectively, of The Companies (Consolidation) Act, 1908.	Company fined £5 on each Summons. A Director fined £50 on each Summons, or in default, three months.
Ditto	Default in forwarding the Annual List and Summary for the year 1914, as required by Section 26 of The Companies (Consolidation) Act, 1908.	Company fined £5. A Director fined £50 and £10 10s. Costs.
Mansion House Justice Room. 30th June, 1915.	Failure to hold a General Meeting during the year 1914, contrary to Section 64 of The Companies (Consolidation) Act, 1908.	Two Directors each fined £20 and £5 5s. Costs or, in default, fifty-two days. Secretary fined £10 or, in default, twenty-six days.

PENALTIES—(Continued).

Place and Date of Conviction.	Nature of Offence.	Penalty.
Hailsham Petty Sessional Court. 20th Mar., 1912.	Failure to hold a General Meeting during the year 1911, contrary to Section 64 of The Companies (Consolidation) Act, 1908. Also knowingly and wilfully permitting default to be made in filing 1911 List and Summary with the Registrar, contrary to Section 26 of the said Act.	Each of two Directors fined £50 (£25 on each Summons), and £14 17s. 8d. Costs or, in default, two months.
Mansion House Justice Room. 26th July, 1912.	Knowingly permitting default* to be made in filing with the Registrar Particulars of Contract, contrary to Section 88 of The Companies (Consolidation) Act, 1908.	Director fined £50.
Bow Street Police Court. 6th May, 1909.	Knowingly and wilfully permitting default to be made in filing contract with the Registrar, contrary to Section 7 of The Companies Act, 1900 [now Section 88 of The Companies (Consolidation) Act, 1908].	£40 and £4 4s. Costs.

For failing to furnish to the Registrar full and accurate particulars respecting the nationality of origin of a Director who held that office in seven Companies, the Director was fined £100 on each of seven summonses and ordered to pay £26 5s. costs, and each Company was ordered to pay a fine of £1 and £5 5s. costs. A Company registered since the 22nd November, 1916, was fined £2, with £2 2s. costs, for sending out a business letter on which the names of all the Directors were not mentioned; and in the case of another Company

a Director was fined £25, with £5 5s. costs, for permitting the Company to make a Return setting out as the "usual residence" of two of the Directors an address at which neither of such Directors had ever resided.

• Many other cases might be cited; but it will suffice to say that proceedings are frequently instituted by the Board of Trade in consequence of reports made to the Board by the Registrar of Companies against Companies whose Returns are in arrear, and Liquidators who are in default in filing accounts of their receipts and payments; and that a fine proportionate to the gravity of the offence has been imposed in every recent instance, in addition to costs.

The offences in respect of which Companies and their Officers are rendered liable to penalties are somewhat numerous, as a reference to the index under the heading of "Penalties" will indicate.

The Court may direct that the whole or any part of a fine imposed for default in complying with the Act shall be applied in payment of the costs of the proceedings or in rewarding the informer (Section 277).

POWERS OF ATTORNEY.

A Company may by an instrument executed under its Common Seal appoint an Attorney to execute deeds on its behalf in any place outside the United Kingdom, either generally or in respect of any specified matters. Every deed signed by such Attorney on behalf of the Company and under his seal binds the Company as if the instrument were under the Common Seal (Section 78).

With a few exceptions, Powers of Attorney require a stamp of 10s., which must be impressed within thirty days after execution.

When an instrument appointing a proxy is intended for use at more than one Meeting, such instrument is liable to the stamp duty of 10s. as a Power of Attorney.

PREFERENTIAL PAYMENTS.

In a winding up the debts having priority in law are—

- (a) All parochial or other local rates due at the date mentioned later,* and having become due and payable within twelve months next before that date, and all Taxes, Land Tax, Property or Income Tax assessed up to the 5th April next before that date, and not exceeding one year's assessment;
- (b) All wages or salary of any clerk or servant in respect of services rendered to the Company during four months before such date, not exceeding £50;
- (c) All wages of any workman or labourer in respect of services rendered during two months before such date, not exceeding £25. But where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he has priority in respect of the whole of such sum, or a part thereof, proportionate to the time of service up to such date;
- (d) All amounts due under The Workmen's Compensation Act, 1906, the liability whereof accrued before such date, subject nevertheless to the provisions of Section 5 of that Act, as amended by Section 19 of The Workmen's Compensation Act, 1923; and —
- (e) All contributions payable by the Company under The National Insurance Act, 1911, or under The Unemployment Insurance Act, 1920, in respect of employed contributors or workmen in an insured trade during four months before such date.*.

Where, however, the Company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another Company provisions (d) and (e) do not apply.

The date referred to is in the case of a Company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the

* See Section 110 of The National Insurance Act, 1911, and Section 26 of The Unemployment Insurance Act, 1920.

date of the Winding-Up Order; and in any other case, the date of the commencement of the winding up. A winding up, whether voluntary throughout or subsequently continued under the supervision of the Court, is deemed to have commenced on the date of the passing of the resolution to wind up. A Special Resolution is deemed to be passed at the date of confirmation.

The debts referred to rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they must be discharged proportionately (Section 209). They are declared to be payable "in priority to all other debts," and consequently have priority even over debts to the Crown, except those specified in Paragraph (a),* unless, of course, process was issued before commencement of the winding up.

In the case of a Company registered in England or Ireland, such debts, so far as the assets available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of Debentures under any floating charge created by the Company, and must be paid accordingly out of any property subject to that charge.

It is the duty of the Liquidator to discharge forthwith the foregoing debts so far as the assets allow, retaining, however, a sum sufficient to defray winding-up expenses. Such expenses comprise all costs, charges, and expenses properly incurred in the voluntary winding up (including the remuneration of the Liquidator), and are payable before all other claims (Section 196).

If a landlord or other person distrains on any goods or effects of the Company within three months next before the date of a Winding-Up Order, the debts having priority are a first charge on such goods or effects or the proceeds of the sale thereof. In the event of any money being paid

* *In re H. J. Webb & Co. (Smithfield, London), Limited*, [1922] 2 Ch. 369, affirmed *sub nom. Food Controller and Others v. Cork*, [1923] App. Cas. 647.

under any such charge the landlord or other person has the same rights of priority as the person to whom the payment is made. This provision does not apply in the case of a voluntary liquidation.

In the application of Section 209 (of which the foregoing is a summary) to Companies within the Stannaries certain modifications are made by Section 240: *e.g.* A clerk or servant has priority for three months only, and the principal agent, purser, manager, and secretary are not privileged. Wages of miners, artisans, and labourers are preferential to an amount equal to three months' wages. Amounts due under The Workmen's Compensation Act, 1906, and workmen's wages unpaid at the commencement of the winding up must be paid forthwith in priority to all costs, except (in the case of a winding up by the Court) costs of and incidental to the Winding-Up Order properly incurred.

PRELIMINARY EXPENSES.

The amount, or the estimated amount, of the Preliminary Expenses incurred in the formation of a Public Company must be stated in the Prospectus (unless it is issued more than one year after the Company is entitled to commence business) or in the Statement in Lieu of Prospectus, and also in the Report presented to the Shareholders at the Statutory Meeting [Sections 65 (3); 81 (1) (i), and (8); and 82].

The "Preliminary Expenses" will include *inter alia* the duty and fees paid on Incorporation of the Company, and the duty required on any preliminary Agreements, the cost of printing the Memorandum and Articles of Association, Prospectus (if any), Letters of Allotment, Share Certificates, &c., and of advertising and circulating the Prospectus, and the fees of the Solicitor for the preparation of the various documents and his other services in connection with the formation of the Company.

See also PROMOTER.

PRIVATE COMPANIES.

The expression "Private Company" is defined by Section 121 of the Act of 1908, as amended by The Companies Act, 1913, as a Company which by its Articles of Association—

- (a) Restricts the right to transfer its Shares; ✓
- (b) Limits the number of its Members (exclusive of persons who are in the employment of the Company and of persons who, having been formerly in the employment of the Company, were while in such employment and have continued after the determination of such employment to be Members of the Company) to fifty; and
- (c) Prohibits any invitation to the public to subscribe for any Shares or Debentures of the Company.

The restriction on the right to transfer Shares must be comprehensive. If the Articles allow any of the Shares to be freely transferred the Registrar of Companies will regard the Company as a Public one, and require each Annual Return to include a Statement in the form of a Balance Sheet. A provision in the Articles that the Directors may decline to register any proposed transfer of Shares suffices, and, in fact, almost any general restriction is regarded by the Registrar as complying with Condition (a). If, however, the Directors have power to refuse a transfer only in the case of Shares of a particular class or of Shares not fully paid up or subject to a lien, the restriction is not sufficient. The Articles must not take authority to issue Share Warrants to Bearer (either expressly or by adopting Table A without excluding Clauses 35 to 40), as the transfer of Shares comprised in any such Warrant is not capable of being restricted.

Where two or more persons hold Shares jointly they are reckoned as a single Member for the purpose of Condition (b). (*See under JOINT HOLDERS.*) ;

Unless the Articles strictly comply with all the conditions specified in the definition the Company will be regarded by the Registrar as a Public Company, even though it may be of an entirely private character. Where the Articles do not contain the requisite provisions the Company can become a Private Company within the definition by passing and confirming a Special Resolution including the aforesaid special provisions in its Articles and deleting anything which may be incompatible therewith.

Every Annual Return must contain a Certificate, signed by a Director or the Secretary, that no invitation has been issued to the public to subscribe for any Shares or Debentures since the date of the last Return or (in the case of the first Return) of incorporation. Where the number of Members exceeds fifty there must be a further Certificate that such excess consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the Company's employment, were while in such employment and have continued after the determination thereof to be Members.

The only restrictions which by its constitution are imposed on a Private Company, and from which a Public Company is exempt, are the three set out on page 171. On the other hand, a Private Company is entitled to several privileges and exemptions not shared by a Public Company: namely—

- (1) It may consist of only two persons (Section 2).
- (2) The appointment of Directors by the Articles is under no restriction as to their signing and filing a Consent to Act or agreeing to take qualification Shares (Section 72).
- (3) A Statement in Lieu of Prospectus is not required to be filed (Section 82).
- (4) No requirement as to minimum subscription is imposed on the allotment of Shares (Section 85).

- (5) Business may be commenced and the borrowing powers exercised as soon as incorporation is effected (Section 87).
- (6) The Directors are not required to forward to the Members or Debenture Holders or to file with the Registrar of Companies a Report as to the position of the Company prior to its Statutory Meeting (Section 65).
- (7) A Statement in the form of a Balance Sheet is not required to be included in each Annual Return [Section 26 (3)].
- (8) Holders of Preference Shares or Debentures need not be given the same right to receive and inspect Balance Sheets and Reports as is possessed by Ordinary Shareholders (Section 114).

If, however, a Company makes default in complying with any of the provisions included in the Articles in order to constitute it a Private Company, it forfeits the privileges and exemptions set out in the paragraphs numbered 1, 7, and 8, and if it carries on business for more than six months with less than seven Members each individual will incur personal liability for its debts under Section 115, and the Company will be liable to be wound up by Order of the Court under Section 129 (Companies Act, 1913, Section 1).

Subject to any provisions contained in its Memorandum or Articles, a Private Company may be converted into a Public Company. The conversion is effected by passing the appropriate Special Resolution and filing a printed copy thereof with the Registrar, with such a Statement in Lieu of Prospectus as the Company, had it been a Public one, would have had to file before allotting any of its Shares or Debentures, and such a Statutory Declaration as it would have had to file before commencing business. [Section 121 (2)]. A Form of Consent to Act, signed by every Director named in the Statement, and a Contract by them to take up their qualification

Shares (if any), unless they signed the Memorandum of Association for the requisite number at the time of incorporation, should be filed. In the case of a conversion by a Private Company which was originally a Public Company and has been converted into a Private Company the Registrar, however, does not require all the documents mentioned, and the passing and filing of the Special Resolution suffices.

The Statement in Lieu of Prospectus must set out the Minimum Subscription on which the Company may proceed to allotment. If neither the Memorandum nor the Articles specify the Minimum Subscription, the Articles should be altered by Special Resolution so as to fix the amount, unless the whole of the nominal Capital available for issue has been allotted. When the Articles are altered by Special Resolution so as to fix the Minimum Subscription a purely nominal amount will suffice, the object being merely to enable the Statement to be completed and the Declaration made.

If a Private Company desires to remove the limitation on its Membership or to make its Shares freely transferable, it must be converted in proper form into a Public Company, as shown above, whether or not there is any intention of offering Shares or Debentures to the public.

Except where otherwise indicated in this book the provisions of the Act apply to Public and Private Companies alike.

PROHIBITION OF LARGE PARTNERSHIPS.

No Company, Association, or Partnership consisting of more than ten persons may be formed for the purpose of carrying on the business of Banking unless it is registered under the Companies Acts, or formed in pursuance of some other Act of Parliament or of Letters Patent. No such body consisting of more than twenty persons may be formed for the purpose of carrying on any other

business that has for its object the acquisition of gain (either by the body itself or its individual Members), unless it is similarly registered or formed or is a Company engaged in working mines within the Stannaries and subject to the jurisdiction of the Court exercising the Stannaries jurisdiction (Section 1).

PROMOTERS.

There is no Statutory definition of the word "Promoter," nor has a comprehensive definition been furnished by the Courts. In the words of Lord Justice Bowen, the term "Promoter" (or, rather, "Promotion") "is a term, not of law, but of business, usefully summing up in a single word a number of business operations familiar to the commercial world by which a Company is generally brought into existence."*

Power to pay the Preliminary Expenses incurred by the Promoters in the formation of the Company is usually taken in the Memorandum of Association. The Company is not liable, however, unless after incorporation it has entered into an express contract to pay expenses incurred before it was in existence, and even if the Company did subsequent to its incorporation agree to reimburse the Promoters the repayment would be *ultra vires* in the absence of good consideration therefor. It is frequently sought to overcome the difficulty by including a provision for the payment of the Preliminary Expenses in the Agreement to sell the business to the Company or in an Agreement to render services to the Company in the future.

The amount paid within the two preceding years or payable to any Promoter, and the consideration therefor, must be stated in any Prospectus issued by a Company, or in the Statement in Lieu of Prospectus, as the case may be [Sections 81 (1) and 82].

* *Re Whaley Bridge Co. v. Green*, [1880] 5 Q. B. D. 109.

A Promoter may not make any secret profits, nor derive any benefit in any manner at the expense of the Company. He "is accountable to the Company for all moneys secretly obtained by him from it, just as if the relationship of principal and agent, or of trustee and *cestui que trust*, had really existed between him and the Company when the money was so obtained" (Lord Justice Lindley).^{*} It is well established that a Promoter is in a fiduciary relation to the Company and to those persons who become Shareholders, and that he cannot bind the Company in any contract with himself as its Promoter unless he has made a full disclosure of all material facts to the Company.[†]

Every Promoter of a Company is liable to compensate any person who may suffer loss through subscribing for any Shares or Debentures on the faith of a Prospectus containing statements which he knew to be false [Section 84 (1)]. For the purpose of this provision, any person who was a party to the preparation of the Prospectus or of the portion containing the untrue statement is a "Promoter," but the expression does not include a person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the Company [Section 84 (5)].

When a Company is being wound up in England a Promoter may be required to refund or restore (with interest) any money or property misapplied by him (Section 215).

A Promoter is one of the persons who, in a winding up by the Court in England, may be publicly examined as to the promotion or formation or the conduct of the business of the Company or as to his conduct and dealings as Director or Officer thereof (Section 175). He may also be examined as to the trade, dealings, affairs, or property

^{*} *Lydney and Wigpool Iron Ore Co. v. Bird*, [1886] 33 Ch. D. at p. 94.

[†] *Erlanger v. New Sombrero Phosphate Co.*, [1879] 3 App. Ca. 1218.

of the Company by the Court privately or publicly upon the granting of a Winding-Up Order in England, Scotland, or Ireland (Section 174).

PROSPECTUS.

The statutory definition of the expression "Prospectus" is "any Prospectus, Notice, Circular, Advertisement, or other invitation, offering to the public for subscription or purchase any Shares or Debentures of the Company" (Section 285). The term is, therefore, not limited to the formal document known as a Prospectus, but includes any offer, however informal, of Shares or Debentures to the public.

An offer of Shares or Debentures to Members or Debenture Holders by Circular or Notice is exempted by Sub-section (7) of Section 81 from the requirement as to furnishing the particulars set out in the Section; but such a Circular or Notice should be filed with the Registrar if it gives the addressee the right to renounce in favour of other persons, as in that case it may constitute an offer to the public.

What is or is not a Prospectus or an offer to the public depends on the particular circumstances of its issue, and cannot be definitely stated. It has been held that the offer of Shares or Debentures must be made by the Company, and must be an offer to "anybody who chooses to come in."*

Every Prospectus issued by or on behalf of a Company, or by or on behalf of any person who is or has been engaged or interested in the formation of the Company, is required by Section 81 of the Act to set out the Memorandum in full, with the names of the Subscribers and the number of Shares signed for; the names, descriptions, and addresses of the Directors, the Share

* *Sherwell v. Combined Incandescent Mantles Syndicate*, [1907] W. N. 110.
C. L.

qualification for the office, any provision in the Articles as to the remuneration of the Directors, and full particulars as to their relationship with the Promoters; the names and addresses of the Auditors; and information regarding (a) the Promotion and (b) the Shares and Debentures. The particulars required to be disclosed under these two headings may be summarised as follow :—

Promotion.—The amount paid within the last two years or intended to be paid to any promoter, and the consideration for such payment.

Full particulars as to the interest of the Directors in the promotion or in the property to be acquired, and a statement of all payments or proposed payments to the Directors to induce them to take office, or to qualify them, or for services rendered in connection with the promotion.

The names and addresses of the Vendors, with particulars of the amount payable to each individual in cash, Shares, or Debentures, if the purchase has not been completed or the property is to be paid for out of the proceeds of the issue. Any sum payable for goodwill must be disclosed.

The estimated or actual amount of the Preliminary Expenses.

The dates of material contracts and the parties thereto, with the time and place at which the originals or copies may be inspected.

Shares and Debentures.—The number of any Founders', Management, or Deferred Shares, and the nature and extent of the interest of the holders in the property and profits of the Company.

The voting rights conferred by each class of Shares where there is more than one class.

The Minimum Subscription on which the Directors may proceed to allotment, with the amounts payable on application and allotment on each Share.

The number and amount of the Shares and Debentures issued or agreed to be issued as fully or partly paid up otherwise than in cash, with the consideration for each issue.

Any commission paid or payable for subscribing for Shares or Debentures.

In the case of a second or later issue of Shares the amounts offered within the two preceding years, and the amounts actually allotted and paid up in connection with each issue.

Any condition requiring or binding an applicant for Shares or Debentures to waive compliance with any of such requirements, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the Prospectus, will be void [Section 81 (4)].

A circular or notice inviting existing Members or Debenture Holders to subscribe for Shares or Debentures of the Company, whether with or without the right to renounce in favour of other persons, is not required to contain the foregoing provisions, but (as stated earlier) any such document containing a power of renunciation should be filed [Section 81 (7)].

In the case of a Prospectus issued more than one year after the date at which the Company is entitled to commence business the requirements as to the inclusion of the Memorandum and as to the qualification, remuneration, and interest of the Directors, and their names, descriptions, and addresses, and the amount or estimated amount of preliminary expenses, do not apply [Section 81 (8)].

Where the Prospectus is published as a newspaper advertisement it is not necessary to specify in the advertisement the contents of the Memorandum or the names of the signatories thereto and the number of Shares subscribed for by them [Section 81 (5)].

Every Prospectus issued by or on behalf of a Company, or in relation to any intended Company, must be dated, and that date is, unless the contrary be proved, taken as the date of publication. A copy of the document, signed by each person named therein as a Director or proposed Director, or by his agent, is required to be filed with the Registrar of Companies on or before the date of issue. If a Director signs by his agent, a written authority, stamped with *ros.* as a Power of Attorney, must be produced to the Registrar. On the face of the Prospectus there must be a statement that a copy has been filed. In the event of a Prospectus being issued before the filing of the copy the Company and every person who is knowingly a party to the default will be liable to a fine not exceeding £5 a day until registration is effected (Section 80).

The copies of the Prospectus issued to the public should correspond exactly with the filed document, which accordingly should be printed.

When a Prospectus is presented for filing, it is examined by the officials at the Registry and provisionally accepted if it appears to be in order. Two or three days later the document undergoes a further official scrutiny, after passing which it is placed on the file relating to the Company, although the filing is regarded as having been effected on the day of presentation. It is not safe to proceed with the printing of the further copies or the publication of the Prospectus before the copy lodged with the Registrar has passed the second examination, as until then there is a possibility that it may be handed back by him owing to an irregularity being discovered therein or for some other reason. The Registrar's examination is intended

to ensure the observance of certain formalities, and the fact that a Prospectus has been accepted by him does not imply that the document is generally in order, or even that the specific requirements of the Act have been complied with.

A Prospectus may be issued before incorporation of the Company, the payment of duties and fees on the Nominal Capital being thereby avoided should the applications be insufficient to enable the Directors to proceed to allotment. But this course is open to serious objection, as the Prospectus must disclose the fact that incorporation has not been effected, and the risk is incurred of the proposed name being adopted by some other Company, seeing that the Registrar has no power to reserve names. When a Prospectus is to be issued before the incorporation of the Company a signed copy of the document must be filed, and the Memorandum and Articles of Association must be prepared, although not lodged at the Companies Registry, as the provisions of the Memorandum, with the names, addresses, and descriptions of the Signatories and the number of Shares subscribed for by them respectively, must appear in the Prospectus.

Subject as hereinafter mentioned, every person who is a Director at the time of the issue of the Prospectus, and every person named as a Director or as having agreed to become one, and every Promoter or other person who authorised the issue of the Prospectus, is liable to compensate all persons who subscribe for Shares or Debentures on the faith of the Prospectus for loss or damage sustained by untrue statements in the document. Such liability, however, should be divided between all persons liable in equal shares, and any Director becoming liable may recover contribution, as in cases of contract, from his co-Directors and other persons who would have been liable if sued separately [Section 84 (1) and (4)]. The circumstances in which relief from liability may be obtained are set out in detail in Sub-section (1) of Section 84.

A Contract referred to in a Prospectus may only be varied prior to the Statutory Meeting subject to the approval of such Meeting (Section 83).

A Company incorporated outside the United Kingdom which has a place of business in this country and uses the word "Limited" as part of its title must state the name of the country in which it was incorporated in every Prospectus inviting subscriptions for its Shares or Debentures in the United Kingdom [Section 274 (4)].

See also ALLOTMENT OF SHARES, DEBENTURES, DIRECTORS' LIABILITY, PROMOTER, STATEMENT IN LIEU OF PROSPECTUS, *and* VENDOR.

PROXIES.

For the purposes of the Companies Acts a proxy is the duly authorised representative of a Shareholder or other person entitled but unable to be present at a Meeting of the Company. The term "proxy" is also applied (although loosely) to the instrument appointing the said representative.

Shareholders may only vote by proxy at General Meetings if the Articles of Association so provide.* Usually no person is allowed to act as a proxy unless he is entitled on his own behalf to be present and vote at the Meeting or he has been appointed as proxy for a Corporation.

An instrument appointing a proxy, executed within the United Kingdom, must bear an impressed or adhesive stamp of 1d. before execution, the penalty for executing an unstamped document, or attempting to vote under one, being £50. The date of the Meeting must be specified in the instrument, and it is only available at that Meeting and at any adjournment thereof (Stamp Act, 1891, Section 80). If the date is left blank, or the instrument

* *Harben v. Phillips*, [1883] 23 Ch. D. 14.

is intended for use at more than one Meeting, it is liable to the duty of 10s. as a Power of Attorney, and may be stamped within thirty days after execution.

Proxy forms first executed out of the United Kingdom may be stamped within thirty days after receipt in the United Kingdom (Finance Act, 1907, Section 9).

The provisions of the Articles should be carefully observed. It is the duty of the Secretary to examine instruments of proxy sent to the Company, and any which are not in accordance with the Articles should be referred to the Chairman of the Meeting. Thus, a Member who is not entitled to vote (as in a case where the Articles do not permit him to vote while any Calls remain unpaid or any lien exists on his Shares) cannot appoint a proxy. Any instrument which was not lodged the prescribed time in advance of the Meeting, or was not duly stamped, will be invalid. The mere fixing of a later date for the taking of a poll has been held to be a continuance of the Meeting for that purpose, and not such an adjournment of the Meeting as would enable proxies lodged the prescribed time before such later date to be counted in the Poll under an Article giving that right to proxies lodged in time for an adjourned Meeting.* Where there is no right given by the Articles to lodge proxies in time for an adjourned Meeting they must be lodged in time for the original Meeting.† Any question arising as to the validity of a form of proxy should be determined by the Chairman, whose decision as entered in the Minute Book will be binding, unless subsequently proved to be wrong.‡

A Company which is a Member of another Company may, by minute of the Directors, authorise any of its officials or any other person to act as its representative

* *Shaw v. Tatf Concessions*, [1913] 1 Ch. 292.

† *McLaren v. Thompson*, [1917] 2 Ch. 261.

‡ *R. v. Indian Zoedone Co.*, [1884] 26 Ch. D. 70.

at any Meeting of the latter Company, and the person so authorised may exercise the same powers on behalf of his Company as if he were an individual Shareholder of the other Company (Section 68), and must be counted in estimating a quorum.*

It has been held that the Directors may use the Company's funds in sending to the Shareholders proxy forms having the names of the Directors or their nominees inserted, and in stamping the forms, and that they may also enclose stamped envelopes for the return of the forms.† (Of course in so doing the Directors must act in good faith, and if they were actuated by personal consideration rather than by regard for the interests of the Company, the proceeding would be irregular.

Clauses 64 to 67 of Table A of 1908 (*see* p. 377 *hereof*) contain specimen provisions governing the issue and use of proxies, and a form of proxy is included.

Special regulations affecting proxies given by Creditors in a winding up have been made by the Companies (Winding-Up) Rules, as to which *see* pp. 421-423.

See also CHAIRMAN *and* VOTES.

PUBLIC COMPANIES.

There is no statutory definition of the term "Public Company." Accordingly every Company which does not come strictly within the definition of the expression "Private Company" (*q.v.*) is regarded by the Registrar as a Public one, however small the Membership or the Capital may be. All Companies not having a Share Capital are technically Public Companies, as they cannot be brought within the definition referred to. The expression "Public Company," whenever used in this book, applies to all Companies which are not Private Companies within the meaning of the Act.

* *Kelantan Coco Nut Estates*, [1920] W. N. 274.

† *Campbell v. Australian Mutual Society*, [1909] 77 L. J. P. C. 117.

A Public Company is subject to the following conditions, from all of which a Private Company is exempt :—

The first Directors must sign either the Memorandum of Association for their qualification Shares or a Contract to take and pay for them, and a Consent by them to act as Directors must also be filed with the Registrar of Companies (Section 72).

A Prospectus or Statement in Lieu of Prospectus must be filed with the Registrar of Companies (Sections 80 and 82).

Contracts referred to in the Prospectus or Statement in Lieu of Prospectus may only be varied prior to the Statutory Meeting subject to the approval of that Meeting (Section 83).

The Directors must not proceed to allotment unless Shares to the amount of the Minimum Subscription have been subscribed for (Section 85).

The Company must not commence business or exercise its borrowing powers until the Registrar's Certificate entitling it to do so has been obtained (Section 87).

Before the Statutory Meeting is held a Report giving certain information as to the Company's affairs must be sent to the Members and Debenture Holders, and a copy filed (Sections 65 and 114).

Every Annual Return of Capital and Members must contain a Statement in the form of a Balance Sheet (Section 26).

Preference Shareholders and Debenture Holders have the same right of inspecting and receiving Balance Sheets and Reports as is possessed by the Ordinary Shareholders if the Company was registered after the 30th June, 1908 (Section 114).

A Public Company, the Membership of which does not exceed the limit specified on page 171, may at any time convert itself into a Private Company by so altering its Articles of Association by Special Resolution as to bring it within the statutory definition of a Private Company.

Except where otherwise indicated in this book the provisions of the Act apply to Public and Private Companies alike.

QUORUM.

No proceedings may take place at either Board or General Meetings unless a quorum is present. If business is commenced in the absence of the requisite number the entire proceedings will be invalid, even though the quorum be made up at an early stage of the Meeting. But where a Director purposely abstained from attending a Board Meeting so that a quorum of Directors should not be present, in order to frustrate the passing of a transfer of Shares to which he objected, the Court ordered the name of the transferee to be placed on the Register as the Holder of the Shares.*

The quorum for Board Meetings is sometimes determined by the Articles, although usually the Directors are left to fix the number for themselves. Table A (1908), for instance, authorises the Directors to fix the number, but provides that in the event of their not doing so the quorum shall (where there are more than three Directors) be three.

If the quorum is not specified in the Articles, and has not been formally determined at a Meeting at which more than half the number of Directors were present, a majority of the Board must attend,† unless (in the case of an old Company) some other proportion has been established by the practice of the Board.‡ In order to avoid doubts and disputes, where the Articles are silent on the point the Directors should at their first Meeting formally determine the quorum for subsequent Meetings. In reckoning a quorum a person who is not entitled to

* *In re Copal Varnish*, [1917] 2 Ch. 349.

† *York Tramways Co. v. Willows*, [1874] 8 Q. B. D. 685.

‡ *Regent's Canal Ironworks*, [1867] W. N. 79.

vote at the Meeting must not be counted.* Where there are few Directors, or only one, the number may be as low as one.†

At Meetings of the Board a Director interested in a contract or arrangement with the Company is usually prohibited by the Articles from voting in respect thereof, or from being reckoned in estimating the quorum when such contract or arrangement is under consideration. In a case where the prohibition affects two Directors who are both interested in a proposed transaction the provisions of the Articles cannot be avoided by dividing the transaction into two parts and allowing each of such two Directors to be counted in estimating a quorum whilst the part of the transaction in which he is not interested is being considered. Moreover, in such a case a reduction of the quorum with the view of enabling the proposed transaction to be approved by the disinterested Directors will be invalid if either of the two interested Directors is estimated in reckoning the quorum when such reduction is purported to be made.‡

Although Directors who are prohibited by the Articles from voting at Board Meetings in respect of contracts in which they are interested must not be counted in reckoning a quorum of Directors at any Meeting at which such a contract is to be considered, they are nevertheless at liberty to vote as Shareholders at a General Meeting held to confirm any contract of the kind.§

The quorum for General Meetings is invariably fixed by the Articles. In the event of there being no quorum present the Meeting must be adjourned or dissolved, as may be directed by the Articles. When Table A of 1908 applies three Members must be personally present, but if

* *Yuill v. Greymouth-Point Elizabeth Railway*, [1904] 1 Ch. 32.

† *Channel Collieries Trust v. Dover Co.*, [1914] 1 Ch. 568.

‡ *North Eastern Insurance Co., in re*, [1919] 1 Ch. 198.

§ *North-West Transportation Co. v. Beatty*, [1881] 12 App. Cas. 589.

that number is not present within half an hour from the time appointed for a Meeting convened by the Directors the Meeting must stand adjourned to the same day in the next week, and if there is no quorum at the adjourned Meeting within half an hour from the time appointed the Members present form a quorum, and may transact the business for which the Meeting was called. If, however, the Meeting was convened upon the requisition of Members, it must be dissolved if a quorum does not attend on the original date, no adjournment being permissible. At least two Members must attend a General Meeting, as one person cannot constitute a Meeting.* But where the Capital is divided into different classes of Shares, and provision is made for separate Meetings of the Holders of the respective classes, a "Resolution" signed by an individual who holds all the Shares of one class will be good.†

A person who has been appointed under Section 68 to act as representative of another Company must be counted in estimating a quorum.‡

See also DIRECTORS' MEETINGS, GENERAL MEETINGS, and MEETINGS.

RECEIVER OR MANAGER.

Any person who obtains an Order for the appointment of a Receiver or Manager of the property of a Company, or who appoints a Receiver or Manager under the powers contained in any instrument, such as (for example) a Debenture, must cause a notice of the appointment to be filed with the Registrar within seven days from the date of the Order or the appointment, as the case may be. The notice must be impressed with a fee stamp of 5s. The penalty for default is £5 a day (Section 94).

* *Sharp v. Dawes*, [1876] 2 Q. B. D. 26; *Sanitary Carbon Co.*, [1877] W. N. 223.

† *East v. Bennett Bros.*, [1911] 1 Ch. 163.

‡ *Kelantan Coco Nut Estates*, [1920] W. N. 274.

A Receiver or Manager who has been appointed under the powers contained in any instrument, and has taken possession, must once in every half year, while he remains in possession and also on ceasing to act, file with the Registrar, in the prescribed form, an Abstract of his Receipts and Payments. Upon ceasing to act he must also file a notice to that effect. The penalty for default in complying with these provisions is £50 (Section 95).

Where an application is made to the Court to appoint a Receiver on behalf of the Debenture Holders or other Creditors of a Company which is being wound up the Official Receiver may be appointed (Section 162).

Where in the case of a Company registered in England or Ireland a Receiver is appointed on behalf of the holders of any Debentures of the Company secured by a Floating Charge, or where possession is taken by or on behalf of those Debenture Holders of any property comprised in or subject to the Charge, the debts—if the Company is not at the time in course of being wound up—which in every winding up have priority in law (*see* PREFERENTIAL PAYMENTS) must be paid forthwith out of any assets coming to the hands of the Receiver or other person taking possession in priority to any claim for principal or interest in respect of the Debentures. The periods of time mentioned in Section 209 of the Companies (Consolidation) Act will be reckoned from the date of the appointment of the Receiver or of possession being taken, as the case may be. Any payments made in accordance with these requirements are to be recouped so far as possible out of the assets available for payment of general Creditors (Section 107).

In cases where a Receiver or Manager carries on business the contracts into which he enters are new contracts, and, if appointed by the Court, he is personally liable. If, however, he is appointed under a provision in the Mortgage or Charge declaring that he is agent for the Company, he acts merely as such agent.

Where the Company is being wound up it is usual for the Liquidator to be appointed as Receiver, unless the circumstances render it advisable for an independent person to act.

See also LIQUIDATOR *and* MANAGER OR MANAGING DIRECTOR.

RECONSTRUCTION.

Where a Company is proposed to be or is in course of being wound up voluntarily the Liquidator may, with the sanction of a Special Resolution, sell the undertaking to another Company in consideration of the allotment of Shares in the purchasing Company to the Members of the Company in liquidation. If, however, the selling Company is not in liquidation at the date of sale, it cannot distribute the proceeds amongst its Members until winding up has commenced. Any such sale or arrangement is binding on all the Members of the Company being wound up; but any Member who did not vote in favour of the Resolution at the time of its passing or confirmation may require the Liquidator either to abstain from carrying the Resolution into effect or to purchase his interest at a price to be determined by agreement or arbitration. He must express his dissent in writing, the notice being addressed to the Liquidator and left at the Registered Office within seven days after the confirmation of the Resolution. If the Liquidator elects to purchase the Member's interest the purchase money must be raised by the Liquidator in such manner as may be determined by Special Resolution and paid before the dissolution (Section 192).

Articles of Association frequently purport to deprive Members of the rights conferred on them by Statute in the case of a winding up with a view to reconstruction, but any such provision is ineffective.*

* *Payne v. Cork Co.*, [1900] 1 Ch. 308.

Reconstruction is frequently effected with the object of either—

- (1) Raising fresh Capital by selling the undertaking for partly paid Shares in the new Company, and then calling up the amount unpaid; or
- (2) Taking wider powers in the Memorandum of Association; or
- (3) Reducing the Capital by selling for a smaller amount in Shares of the new Company than that held by the Members of the old Company; or
- (4) Increasing the paid-up Capital by selling for a larger amount in Shares than the issued Capital of the old Company; or
- (5) Amalgamating two or more Companies.

The Contract to transfer the undertaking from the old to the new Company, which has to be filed with the Registrar of Companies by the new Company, is passed upon adjudication for stamping with ros. only, if it is shown—

- (1) That the Members of the new Company are identical with those of the old, and that they hold their Shares in the same proportions *inter se*;
- (2) That there are no dissentient Members;
- (3) That no Shares are allotted to persons other than the Members of the old Company; and
- (4) That the whole of the Shares in the Capital of the new Company (apart from those taken by the Subscribers, who should only sign for one each) are taken up under the Contract, and that there is no provision in the document for Increase of Capital.

Unless each of these conditions is complied with, *ad valorem* conveyance duty must be paid pursuant to Section 59 (1) of The Stamp Act, 1891, as amended by Section 73 of The Finance (1909-10) Act, 1910, and The Finance Act, 1920, at the rate of £1 per £100, in accordance with the Scale on page 228. (See ALLOTMENT OF SHARES.)

Any reconstruction which is deemed by some of the Shareholders to be unfair in its effect can be brought before the Court by petition; and the Court may make a compulsory Winding-Up Order if it thinks fit.

The name of the old Company cannot be adopted by the new Company unless the former is already in liquidation and the Liquidator testifies his consent in writing. If, however, the old Company is not yet in liquidation the Registrar will allow the new Company to be registered by the same title as that of the old Company, with the addition only of the year of incorporation, if the draft Contract of Sale is produced to him and there is filed a consent under the Seal of the old Company, together with an undertaking that a Special Resolution for winding up (having been previously passed by the requisite majority) will be confirmed by the old Company within the prescribed period. Where special circumstances exist the Registrar will waive compliance with the last-mentioned requirement if furnished with an undertaking by the old Company to go into liquidation within two months after the registration of the new Company is effected. In all such cases the Registrar also requires that the Memorandum of Association of the new Company shall show its principal object to be the acquisition of the undertaking of the old Company.

The course to be followed upon a Reconstruction is somewhat involved, and a Solicitor should be consulted before any steps are taken.

RECTIFICATION OF REGISTER.

If the name of any person is, without sufficient cause, entered in or omitted from the Register of Members, or default is made or unnecessary delay takes place in entering on the Register the fact of any person having ceased to be a Member, the Court may order rectification of the Register and the payment by the Company of any

damages sustained by any party aggrieved. The application may be made by the person aggrieved, by any Member, or by the Company itself. Notice of any such Rectification by the Court must be filed with the Registrar (Section 32). The practice of the Registrar is to require the production of the original Order and the filing of an Office Copy.

The Register of Members may be rectified by the Court either before or after a Winding-Up Order has been made (Section 163).

A Shareholder who applied for Shares upon the strength of statements in the Prospectus may make application to the Court for rectification of the Register by the removal of his name therefrom, and will obtain an Order accordingly if he can prove that when applying for Shares he relied upon what has since been found to be a material misstatement or misrepresentation in the Prospectus. Legal proceedings must be begun without delay, before the Company goes into liquidation.* A signatory to the Memorandum of Association cannot allege misrepresentation and is not entitled to have the Register rectified in respect of the Shares for which he has subscribed that document.†

On the application of the Company or of any person interested the Register of Mortgages kept by the Registrar may be rectified by the Court (Section 96).

See also REGISTER OF MEMBERS, REGISTER OF MORTGAGES, and TRANSFERS OF SHARES.

REDUCTION OF CAPITAL.

Subject to confirmation by the Court, a Company Limited by Shares may reduce its Share Capital in any way. In particular the reduction may be effected by extinguishing or reducing the liability on any partly paid

* *Tennent v. City of Glasgow Bank*, [1879] 4 App. Ca. 615.

† *Lord Lurgan's Case*, [1902] 1 Ch. 707.

Shares; cancelling paid-up Share Capital which is lost or unrepresented by available assets; or paying off paid-up Share Capital which is in excess of the wants of the Company (Section 46).

The consent of the Court is not needed where the reduction is effected by cancelling Shares which at the date of the Resolution had not been taken or agreed to be taken by any person (Section 41); nor in the case of a return to the Shareholders of undivided profits in reduction of the amount paid up on their Shares, thus effecting a reduction of the paid-up Capital and a corresponding increase in the unpaid Capital (as to which see more fully on page 196).

A reduction requiring confirmation by the Court can only be made by Special Resolution, and if authorised by the Articles. If the authority is not therein contained the Articles must first be altered by Special Resolution. As soon as the Resolution to reduce has been confirmed as a Special Resolution the Court may be petitioned for an Order confirming the reduction. The words "and Reduced" must be added to the name of the Company from the time of the confirmation of the Special Resolution until such date as the Court may fix. This requirement does not, however, apply where the reduction does not involve either the diminution of any liability in respect of unpaid Share Capital or the payment to any Shareholder of any paid-up Share Capital, in which case the words "and Reduced" need not be added until the presentation of the Petition; and in these latter circumstances the Court has power to order the addition of these words to particular documents only or to dispense altogether with the addition (Sections 47 and 48).

The Court may require the Company to publish the reasons for reducing the Capital and the causes which led to the reduction (Section 55).

Creditors of the Company are entitled to object to a Reduction of Capital where it involves either the diminution of liability in respect of unpaid Share Capital or the

payment to any Shareholder of any paid-up Share Capital, and in any other case if the Court so directs. The List of Creditors is settled by the Court, which, if satisfied that the consent of every Creditor has been obtained or his debt or claim has been determined or secured, may make an Order confirming the Reduction on such terms and conditions as it thinks fit (Sections 49 and 50). Where no reduction of liability or return of Capital is involved no inquiry for Creditors is necessary.

If through inadvertence the name of any Creditor is omitted from the List of Creditors, and the Company should be unable to discharge his claim, every person who was a Member at the date of the registration of the Order and Minute will be liable to pay the amount for which he would have been liable if the winding up had commenced on the day before such registration. In the event of the Company having been already wound up the Court may settle a list of persons so liable to contribute, and may make and enforce Calls and Orders on such persons as if they were ordinary contributories of a Company in liquidation (Section 53).

A Director or other Officer wilfully concealing the name of a Creditor is deemed to be guilty of a misdemeanour (Section 54).

On the Order being obtained it must be produced to the Registrar and a copy filed, together with a Minute, approved by the Court, showing the alterations effected in the Capital, the amount of the Share Capital, the number of Shares into which it is to be divided, the amount of each Share, and the amount (if any) at the date of registration deemed to be paid up on each Share. The Registrar thereupon issues his Certificate of Registration, which is conclusive evidence that all the statutory requirements have been complied with, and that the Capital is as stated in the Minute. The reduction does not take effect until the Order and Minute have been registered. The Court may also require notice of the

registration to be published in such manner as it may direct (Section 51).

The Minute when registered is deemed to be substituted for the corresponding part of the Memorandum of Association, and must be embodied in every copy of the Memorandum subsequently issued. Default in complying with this requirement renders the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, liable to a penalty not exceeding £1 in respect of each offence (Section 52).

Where a Reduction of Capital requiring confirmation by the Court is to be effected and the Company resolves that, subject to the reduction being duly confirmed, the Capital shall be increased by the creation of new Shares of a nominal value equivalent to (or less than) the amount of the reduction, the Registrar waives any claim for payment of capital duty in respect of the increase, but requires payment of the appropriate fees on the filing of the Notice of Increase.

Owing to the heavy expense and trouble involved in obtaining the sanction of the Court to a Reduction of Capital, it is generally more advantageous in the case of small Companies to effect the desired object by a winding up and reconstruction (*see* RECONSTRUCTION).

When a Company has accumulated a sum of undivided profits which, with the sanction of the Shareholders, can be distributed in the form of a Dividend or "Bonus," the Company may elect not to pay the amount irrevocably as a Dividend, but to deal with it as a temporary reduction of paid-up Capital, subject to its being called up again at any time, if required. In such a case the whole or a portion of the amount may be returned to the Shareholders in reduction of the paid-up Capital, any unpaid Capital being correspondingly increased. A Special Resolution is required for the purpose, but it does not take effect until a Memorandum, giving such particulars as are required in the case of a Reduction of Capital, has been filed with the

Registrar, although the other provisions of the Act with respect to reduction of Capital do not apply. Any Member who does not wish to accept the sum due to him on the terms mentioned may require the Company to retain it, and amounts so retained must be specified in subsequent Annual Returns. Statements of Account laid before General Meetings must specify the amount of undivided profits returned in reduction of paid-up Capital (Section 40).

A Company Limited by Guarantee and having a Share Capital, and possessing authority in its Articles of Association, may reduce its Capital without the sanction of the Court if registered before 1901. But if registered after the 31st December, 1900, the Company is subject to the same obligations as a Company Limited by Shares (Section 56).

See also CANCELLATION OF SHARES.

REGISTERED OFFICE.

Every Company is required to have a Registered Office, to which all communications and notices may be addressed (Section 62). Any "document"—in which term is included a summons, notice, order, or other legal process (Section 285)—may be served on the Company by leaving it at or sending it by post to the Registered Office. At this Office must be kept the Registers of Members and Directors and copies of any Debentures or Mortgages and Charges created by the Company and requiring registration under the Act [Sections 30, 75, and 93 (9)]. All the other statutory books should also be kept there. Where Table A of 1862 applies, the Books of Account must also be kept at the Registered Office, but the Tables of 1906 and 1908 allow the Directors to keep them elsewhere if they think fit. •

Notice of the Situation of the Registered Office should be filed at the time of incorporation, and notice has also to be given upon any change of address taking place, a fee stamp of 5s. being payable in either case. Any

Company carrying on business without complying with these requirements is liable to a fine not exceeding £5 a day (Section 62).

Upon the outside of the Registered Office, and of every office or place in which its business is carried on, the name of the Company must be plainly affixed or painted (Section 63). A brass plate is frequently used.

A Company cannot move its Registered Office from one division of Great Britain or Ireland to another, as its situation (England or Scotland or Northern Ireland or the Irish Free State) is required to be stated in Clause 2 of the Memorandum, which is unalterable.

Companies incorporated outside the United Kingdom which establish a place of business in the United Kingdom, and Assurance Companies constituted outside the United Kingdom carrying on business within the United Kingdom, must file with the Registrar, *inter alia*, the name and address of one or more persons resident in the United Kingdom authorised to accept service on behalf of the Company. Notice of any change of address must also be filed [Section 274 (1) of the Act of 1908 and Section 19 of The Assurance Companies Act, 1909]. These provisions apply to Jersey, Guernsey, and Isle of Man Companies as well as to Foreign and Colonial Companies.

REGISTER OF DIRECTORS.

Every Company is required by Section 75 of the Companies Act to keep at its Registered Office a Register containing the names, addresses, and occupations of its Directors* or Managers, and from time to time to notify to the Registrar any change among its Directors or Managers. These requirements have been enlarged and extended by The Companies (Particulars as to Directors) Act, 1917 (which applies to Companies the principle of

* As to the meaning of the word "Director" in relation to this requirement see page 78.

The Registration of Business Names Act, 1916), and additional particulars respecting the Directors are required to be entered in the Register of Directors, and on any change occurring in those particulars as recorded in the Register notification thereof must be given to the Registrar by filing the appropriate Form. The penalty for default in complying with the requirements of the Section is £5 a day, the Company and each Director or Manager being alike liable (Section 75).

The combined effect of the 1908 and 1917 Acts renders necessary the inclusion in the Register of the following particulars concerning the Company's Directors :—

- (a) The present Christian name or names and surname ;
- (b) Any former Christian name or names or surname ;
- (c) Nationality ;
- (d) The nationality of origin (if other than the present nationality) ;
- (e) The usual residence ;
- (f) Other business occupation(s), if any.

The Register must also record any changes in the above particulars. The following comments on the requirements of the Act may be helpful to those on whom the duty of entering up the particulars in the Register devolves.

The expression Christian name includes any forename ; and the case of a Jew or Mohammedan or member of any non-Christian body is thus provided for.

If a Director has at any time changed his name the former name must be shown, except in the case of a natural-born British subject whose Christian name or surname was changed or disused or who adopted an additional name before attaining the age of eighteen, or the change of name by a woman on marriage, or the adoption of or succession to a British title different from the owner's surname, in which latter case it is the title that must be shown.

The nationality of every Director, whether British or not, must be recorded. The original nationality of foreigners who have been naturalised in this or any other country must be shown, and if a Director was originally British and was subsequently naturalised in some other country that fact must be disclosed. Where a woman has acquired British nationality by marriage it is necessary to state her original nationality, and when an English woman has married a foreigner (not naturalised in this country) the nationality so acquired and the fact that she was originally of British nationality must appear in the Register.

The requirement of the Companies Act of 1908 was only that the "address" of a Director should be entered in the Register, and it was a frequent practice to record the business address in preference to the private one. But it must be noted that the business address may not now be given unless a Director resides on the premises.

If a Director has any other business or professional occupation it should be stated in the column headed "Other business occupation(s), if any." Where a Director is a Director also of other Companies the name of at least one of such Companies should be specified, and he should not merely be described as "Director of Companies" or "Company Director."

Where a Director has no business occupation other than that of Director of the Company whose Register is being entered up the word "none" should be written against his name in the appropriate column. Such expressions or titles as "Gentleman," "Esquire," "Spinster," "Widow," "J.P.," or "Peer" (or any statement indicating that a Director has retired from some occupation or profession) should not be entered on the Register, as they are not occupations.

Every Annual Return must also contain a List of the Directors or Managers with the particulars (a) to (f), set out on p. 199, as they appear in the Register of Directors at the date to which the Return is made up.

See also ANNUAL RETURN.

REGISTER OF MEMBERS.

Every Company is required to keep a Register in which must be entered the names, addresses, and occupations of all Members, the date at which each person was entered in the Register, and the date at which any person ceased to be a Member. Where the Company has a Share Capital the Register must also contain a statement of the Shares held by the Members respectively, distinguishing each Share by its number, and of the amount paid or agreed to be considered as paid on the Shares of each Member.

If these requirements are not complied with, the Company, and every Director or Manager knowingly and wilfully authorising or permitting the default, will be liable to a fine not exceeding £5 a day (Section 25).

The names of the Subscribers to the Memorandum of Association must be entered in the Register on the incorporation of the Company. Every other person who agrees to become a Member and whose name is entered in the Register is a Member of the Company (Section 24).

The Register is *prima facie* evidence of any matters authorised to be inserted therein by the Companies Act (Section 33).

No notice of any trust, expressed, implied, or constructive, may be entered on the Register in the case of Companies registered in England or Ireland (*see* TRUSTS), nor may any evidence of a lien on Shares appear in the Register.*

* *Re* W. Key & Son, [1902] 1 Ch. 467.

An Annual List and Summary must be contained in a separate part of the Register of Members of a Company having a Share Capital (Section 26). The Annual Returns of Capital and Members (*see* pp. 12 to 15) must be copied from the List and Summary.

The Register, commencing from the date of incorporation, must be kept at the Registered Office, and (subject to such reasonable restrictions as may be imposed by the Company in General Meeting, and so that not less than two hours in each day be allowed for inspection) must be open during business hours to the inspection of any Member gratis, and to the inspection of any other person on payment of 1s., or such less sum as the Company may require for each inspection [Section 30 (1)]. But it should be remembered that the right to inspect ceases on a Company going into liquidation unless an Order of Court is obtained (Section 221). Any person may apply to be furnished with a copy of the Register or of the List and Summary, or any part thereof, on payment of 6d. for every 100 words copied [Section 30 (2)].

Notwithstanding these provisions, however, difficulty is frequently experienced in obtaining inspection or a copy of a Company's Register. Consequently, where the information required is contained in the Annual Return or any other registered document (such as a Return of Allotments or Contract of Sale), the usual practice is to bespeak copies of the document on the file, in which case a search fee of 1s. and copying fees at the rate of 4d. per folio of 72 words have to be paid.

A Company declining to allow inspection of the Register or to furnish a copy thereof, and every Director and Manager knowingly authorising or permitting the refusal, will be liable to a fine not exceeding £2 in respect of each offence, and to a further fine not exceeding £2 for every day during which the refusal continues [Section 30 (3)].

The Register may be closed by the Company for any time or times, not exceeding in the whole thirty days in each year, on giving notice by advertisement in some newspaper circulating in the district in which the Registered Office is situate (Section 31). Where the Membership is large it is usually found convenient to close the Register about a fortnight before and after each Annual Meeting.

On the application of the transferor of any Share or interest in a Company, the name of the transferee must (subject to any restriction on transfers imposed by the Articles) be entered in the Register of Members as if the application were made by the transferee (Section 28). A transfer by the personal representative of a deceased Member—although not himself a Member—is as valid as if he were a Member at the time of the transfer (Section 29).

The Register should be promptly and accurately entered up, as delay or inaccuracy may result in costly litigation. If the name of any person is without sufficient cause entered in or omitted from the Register, or if default is made or unnecessary delay takes place in entering on the Register the fact of any person having ceased to be a Member, application may be made to the Court for rectification of the Register (Section 32).

On surrendering a Share Warrant for cancellation the Bearer is, subject to the Articles, entitled to have his name entered in the Register of Members. On the issue of a Share Warrant the name of the holder of the Shares or Stock specified in the Warrant must be struck out of the Register and particulars of the issue of the Warrant inserted [Section 37 (3) and (5)].

See also COLONIAL REGISTER, RECTIFICATION OF REGISTER, SHARE WARRANTS, *and* TRANSFER OF SHARES.

REGISTER OF MORTGAGES AND CHARGES.

The Registrar of Companies keeps a Register of all registered Mortgages and Charges, and enters therein the date of creation, the amount secured, short particulars as to the property charged, and the names of the mortgagees or persons entitled to the Charge. This Register may be inspected by any person upon payment of a fee of 1s. [Section 93 (2) and (8)]. When a Mortgage or Charge has been paid or satisfied, it is advisable (although optional) to file a Memorandum of Satisfaction in order that the financial position of the Company may appear in its best light; and where this course is adopted the fact will be recorded on the Register (Section 97). A Chronological Index of the registered instruments is also kept by the Registrar (Section 98).

In cases of omission or mis-statement of any particular concerning a Mortgage or Charge the Register of Mortgages may be rectified on an Order being made by a Judge of the High Court (Section 96).

Every Limited Company is also required to keep a Register of Mortgages and to enter therein all Mortgages and Charges specifically affecting its property (*see* p. 152).

See also DEBENTURES and MORTGAGES AND CHARGES.

REORGANISATION OF CAPITAL.

A Limited Company may modify the conditions contained in its Memorandum so as to reorganise its Capital either by consolidating Shares of different classes or by subdividing its Shares into different classes. But no preference or special privilege attaching to any class may be interfered with, unless a Resolution is passed by a majority in number of Shareholders holding at least three fourths of the Capital of that class and confirmed at a Meeting of Shareholders of that class in the manner

prescribed for a Special Resolution of the Company. Every such Resolution is binding on all the Shareholders of that class.

The reorganisation must be approved by a Special Resolution of the Company and confirmed by an Order of the Court, and an office copy of the Order must be filed with the Registrar within seven days after it is made or such further time as the Court may allow. Until the copy of the Order is filed the Resolution will be of no effect (Section 45).

See also ALTERATIONS OF CAPITAL.

RESERVE LIABILITY.

A Limited Company may by Special Resolution determine that any portion of its Share Capital which has not been called up shall not be capable of being called up except in the event and for the purposes of the Company being wound up (Section 59). Usually the object of passing such a Resolution is to enable the Company to obtain credit more freely, as the uncalled Capital so reserved cannot be charged by Debentures.

Although Special Resolutions as a general rule may be rescinded by subsequent Special Resolutions, it would seem that one creating a Reserve Liability is irrevocable.* A provision in the original Articles purporting to create a Reserve Liability, however, may be modified or rescinded by Special Resolution.†

An Unlimited Company having a Share Capital may, by its Resolution for registration as a Limited Company, provide that a specified portion of its uncalled Capital shall only be called up in the event and for the purposes of a winding up (Section 58).

* *Hartlett v. Mayfair Property Co.*, [1898] 2 Ch. 28.

† *Malleson v. National Insurance Co.* [1897] 1 Ch. 200.

SEAL.

Every Limited Company (except an Association not for Profit) is required to have its name "engraven in legible characters" on its Common Seal. A rubber stamp should not be used as a Seal, as the name is not "engraven" thereon. Any Director, Manager, or Officer of such Company who uses or authorises the use of any Seal whereon the name of the Company is not so engraven renders himself liable to a fine not exceeding £50 (Section 63).

In order that the Seal may not be used without authority, and be kept free from dust and observation, it is usual and advisable to keep it in a strong japanned or wooden box fitted with two locks, the keys of which should be kept by different Directors.

It is usual, although not essential, for the Articles to provide that one or more Directors and the Secretary, or some other person appointed by the Directors, shall sign every instrument to which the Seal of the Company is affixed in their presence, and in such case the prescribed signatures form part of the execution of the instrument.*

A Company transacting business in foreign countries may, if authorised by its Articles, have an Official Seal for use out of the United Kingdom. Such a Seal must be a facsimile of the Common Seal, with the addition on its face of the name of every territory, district, or place where it is to be used. Any person appointed for the purpose in any place not situate in the United Kingdom, and having the written authority of the Company under its Common Seal, may affix the Official Seal to any deed or other document to which the Company is a party in that place. The date and place of affixing the Official Seal must be certified in writing on the instrument under the hand of the person using the Seal. A deed or document to which an Official Seal is duly affixed binds the Company as if it were under its Common Seal (Section 79).

* *Deffell v. White*, [1866] L. R. 2 C. P. 144.

SEARCHES AND COPIES OF DOCUMENTS.

Registered documents of Companies are frequently inspected with the view of obtaining information as to their financial position, the amount of their indebtedness secured by charges requiring registration, the Shares held by particular persons, and various other particulars. As Companies are now required to furnish numerous Returns disclosing important particulars relating to their affairs a competent agent can often obtain valuable information as to a Company's position by examining the documents on its file at the Registry. Secrecy is assured, as the name of the principal for whom the agent acts is, of course, not disclosed.

That losses sustained by persons having transactions with Companies would frequently be avoided if they were to make themselves acquainted with the information afforded by the filed documents is shown by the following paragraph extracted from a Report by the Board of Trade on the working of the Companies Acts :—

Attention has on many occasions been called in the Annual Report to the Board of Trade to the necessity for persons, when they are dealing or intending to deal with a Limited Company, to make inquiries as to the Company's obligations on Debentures, and to be guided as regards giving credit accordingly. The principle underlying Company legislation in this country is the compelling publicity of material facts for the information and guidance of would-be creditors. Many persons, however, seem to be ignorant of the provisions which exist for their protection, or in the competition for business are prepared to neglect them, and it cannot be too strongly impressed upon the commercial public that if they deal with a Limited Company they must be on their guard to protect themselves by inquiring about Debentures before giving credit, and must not rely upon the law to save them when they neglect to do so.

Documents filed with the Registrar of Companies may be inspected upon payment of a search fee of 1s., and if copies are desired they will be furnished upon payment

of the prescribed fees [Section 243 (6)], which are at the rate of 4d. per folio of 72 words. If required, the Registrar will certify copies and thus make them admissible in evidence as of equal validity with the originals [Section 243 (7)]. In such cases 1s. additional must be paid in respect of each document copied (Stamp Act, 1891, *Schedule*).

Liquidation Accounts can only be seen, and copies thereof obtained, by Creditors or Contributories of the Company or their agents [Section 224 (2)].

Five Shillings must be paid for a second Certificate of Incorporation [Section 243 (6)].

SECRETARY.*

The Secretary is one of the principal Officers of the Company, and is wholly or partly responsible for the accuracy of documents filed with the Registrar. He is personally liable if he omits the word "Limited" from a Bill of Exchange, Promissory Note, or order for goods and the Company fails to pay the amount due (Section 63).

The Secretary is an agent of the Company, and representations made by him may bind the Company; but if the representations are outside the scope of the Secretary's duty the Company is not responsible. He is of course liable if he accepts any secret commission or bribe in contravention of The Prevention of Corruption Act, 1906.

A person who is appointed Secretary should make himself acquainted with the provisions of the Companies Acts—particularly those relating to the signature, stamping, and registration of Annual Returns and other documents and the entering up of Registers, Minute Books, &c. The scrutiny of transfers, proxies, and other

* Further information regarding the Secretary's duties and responsibilities is given in "The Secretary's Manual" and "The Secretary and His Directors" (see Publishers' Announcements at end of book).

forms is a responsible duty falling to him which requires the exercise of care. It is also his normal duty to prepare the Agenda for the various Meetings of the Company and of its Directors, to send out the necessary Notices, and to take notes and write up the Minutes.

Before registering or recording transfers and other instruments chargeable with stamp duty the Secretary should satisfy himself that the proper duty has been paid. If an instrument which is not duly stamped is registered or recorded the Officer responsible incurs a fine of £10 (Stamp Act, 1891, Section 17).

The Secretary is a "Clerk or Servant" within the meaning of Section 209 (1) (b), and is therefore entitled, in a winding up, to preferential payment of salary due in respect of services rendered during the four months immediately preceding the winding up, but he cannot claim for more than £50 as a preferential creditor. If, however, the Secretary does not give the whole of his time, but employs some other person to do the major portion of the work, he is not entitled to rank as a preferential creditor.*

The duty of rendering Returns under the Income Tax Acts devolves upon the Secretary, and it is of great importance that in these as in other matters coming within his personal duties he should have wide and accurate practical knowledge of the law and the various official requirements.

SERVICE AND AUTHENTICATION OF DOCUMENTS.

A document may be served on a Company by leaving it at the Registered Office or by posting it to that address (Section 116).

Foreign Companies establishing a place of business in the United Kingdom must file with the Registrar the

* *Carney v. Back*, [1906] 2 K. B. D. 746.

names and addresses of one or more persons authorised to accept service of process and any notices required to be served on the Company, and from time to time notify any alteration in the list (Section 274).

A document requiring authentication by a Company may be signed by a Director, Secretary, or other authorised Officer, and need not be under seal (Section 117).

SHARES.

Shares or other interests of a Member are personal estate, transferable as provided by the Articles. Each Share in the Capital must be distinguished by an appropriate number (Section 22).

The word "Shares" includes Stock, except where a distinction between Stock and Shares is expressed or implied (Section 285).

Shares are often divided into several classes, each conferring on the respective holders distinct rights and privileges as regards Dividends, repayment of Capital, Votes, &c. Where there is more than one class of Shares the respective voting rights attached to each class must be stated in any Prospectus issued by the Company (Section 81).

Except with the sanction of the Court, and as stated later, a Company cannot purchase its own Shares or issue Shares at a discount,* as this would amount to an illegal reduction of the Capital. Any provision in the Articles purporting to authorise such a proceeding is void. Commissions may, however, subject to certain conditions, be paid to persons in consideration of their subscribing for Shares (*see* p. 52).

For further information *see* under various headings.

* *Trevor v. Whitworth*, [1888] 2 App. Ca. 409; *Welton v. Saffery*, [1897] A. C. 299.

SHARE CERTIFICATES.

Unless the conditions of issue otherwise provide, every Company must have the requisite Certificates ready for delivery within two months after the allotment of any of its Shares or the registration of any transfer thereof. Failure to comply with this requirement renders the Company and every Director or other officer who is knowingly a party to the default liable on conviction to a fine not exceeding £5 a day (Section 92).

A Certificate, under the Common Seal, is *primâ facie* evidence of the title of a Member to the Shares specified therein (Section 23). Every Member is entitled to a clean Certificate, *i.e.* a Certificate on which there is no reference to any lien on or indebtedness in respect of the Shares specified therein.*

Certificates should set out the distinctive numbers of the Shares to which they relate, and the amount paid up on each Share. Where more than one class of Shares is issued it is advisable to have the respective Certificates printed in different colours or styles.

The first Certificate is generally supplied without charge; but in the event of it being lost or destroyed a small charge is usually made for renewal. A second Certificate should not, however, be issued without an indemnity (bearing a Sixpenny stamp) safeguarding the Company, its Officers, and Members against any loss or damage which may be incurred as a result of issuing the new Certificate; and every precaution must be taken to guard against *mala fides*. In order to put intending purchasers or lenders on their guard additional Certificates are sometimes marked "Second Certificate."

A Share Certificate does not require a stamp, but a Provisional (or "Scrip") Certificate, entitling the holder to become the owner of the Shares specified therein must bear an impressed stamp of 2d. (Stamp Act, 1891, *Schedule*, and Finance Act, 1920, Section 35).

* W. Key & Son, [1902] 1 Ch. 467.

The Forgery Act, 1913, Section 9, renders any person who unlawfully engraves or prints a Share Certificate or similar document liable to penal servitude for a period not exceeding seven years. Any person who forges or alters a Share Certificate with intent to defraud is guilty of felony, and liable to penal servitude for a period not exceeding fourteen years. This enactment does not apply to Scotland (*see also* FORGERY).

SHARE WARRANTS.

If authority is contained in the Articles, a Company Limited by Shares may issue under its Common Seal a Warrant stating that the Bearer thereof 'is entitled to certain fully paid Shares or Stock. The payment of future Dividends may be provided for by means of Coupons or otherwise. A Share Warrant entitles the Bearer to the Shares or Stock specified, and is transferable by delivery [Section 37 (1) and (2)]. Warrants cannot be issued in respect of partly paid Shares.

On a Warrant being issued to a person the Company must strike his name out of the Register, and enter therein (a) the fact of the issue of the Warrant; (b) a statement of the Shares or Stock included in the Warrant, distinguishing each Share by its number; and (c) the date of the issue of the Warrant. Until the Warrant is surrendered for cancellation and entry of the Holder's name in the Register as a Member these are the only particulars required to appear in the Register; and on the surrender the date thereof must be entered as if it were the date at which a person ceased to be a Member [Section 37 (5) and (6)].

The Bearer of a Warrant may, if the Articles so provide, be deemed to be a Member of the Company, either to the full extent or for any purposes defined in the Articles. But the Shares or Stock specified in the Warrant will not form a qualification for a Director where one is required by the Articles [Section 37 (4)].

Subject to the Articles, the Bearer of a Warrant is entitled, on surrendering it for cancellation, to have his name entered in the Register of Members. The Company is, however, responsible for any loss incurred by any person should the name of any Bearer of a Warrant be entered without it being surrendered and cancelled [Section 37 (3)].

If authority to issue Share Warrants is not contained in the original Articles they must be altered by Special Resolution before any issue is made.

Companies Limited by Guarantee and Unlimited Companies are not empowered to issue Share Warrants.

Share Warrants are largely issued in France and other European countries, but not often in England. They have serious disadvantages, the more important being the danger of loss by theft or otherwise, and the difficulty of communicating with the holders except by advertisement in the Press, and of getting them to attend Meetings. Share Warrants are, moreover, unsuitable where the dividends are liable to fluctuate.

The Articles of Association of a Public Company generally empower the Directors to issue Share Warrants to Bearer, and the power is also taken by Clauses 35 to 40 of Table A of 1908. A Private Company may not issue Share Warrants, inasmuch as it is impossible to place any restriction upon the transfer of Shares comprised in such Warrants, and the Articles of any Company which it is desired to register as a Private Company must not, therefore, contain the power to issue Share Warrants. Where the Company adopts Table A with modifications as its Articles Clauses 35 to 40 must be specifically excluded. For the same reason any Public Company which is desirous of converting itself into a Private Company must pass a Special Resolution deleting, *inter alia*, any provisions empowering the Company to issue Share Warrants.

The duty payable on Share Warrants is "three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the Share or Shares or Stock specified in the Warrant if the consideration for the transfer were the nominal value of such Share or Shares or Stock." In other words, the rate of duty is £3 for every £100 of Shares or Stock, the minimum amount payable being 3s. The penalty for issuing a Warrant not being duly stamped is £50 (Stamp Act, 1891, Section 107, and *Schedule*).

Share Warrants issued by Companies formed or established out of the United Kingdom are, if negotiated in the United Kingdom, chargeable with duty at the rate of 4s. for every £10, or fractional part of £10, of the nominal value of the Shares or Stock to which they relate [Finance Act, 1899, Section 4 (1); Finance (1909-10) Act, 1910, Section 76; and Finance Act, 1920, Section 38].

See also FORGERY, PERSONATION, &c.

SPECIAL RESOLUTIONS.

A Special Resolution is a Resolution which (a) has been passed by a majority of not less than three fourths of such Members of a Company entitled to vote as are present, in person or by proxy (where proxies are allowed), at any General Meeting of which notice specifying the intention to propose such Resolution either as an Extraordinary or Special Resolution has been duly given, and (b) has been confirmed by a majority of such Members entitled to vote as are present, in person or by proxy (where proxies are allowed), at a subsequent General Meeting, of which notice has been duly given, and held after an interval of not less than fourteen days nor more than one month from the date of the previous Meeting [Section 69 (1) and (2)].

The interval between the two Meetings at which a Special Resolution is passed and confirmed respectively must not be less than fourteen days nor more than one month, exclusive of the days on which they are held.* A Resolution passed on the first of the month, therefore, cannot be confirmed before the sixteenth of the same month or later than the second of the next. But the Registrar will accept a Special Resolution where the Confirmatory Meeting at which it was passed has been adjourned to a date more than a month from the date of the Meeting at which the Resolution was submitted, if the date of the Meeting from which the Confirmatory Meeting was adjourned was convened and held within the required time, an adjournment of a Meeting having been held to be a continuation of the original Meeting.† No error is more common than that of confirming Special Resolutions after less than the requisite interval has elapsed. Such Resolutions are invalid, and, if possible, should be confirmed afresh within a month after the first Meeting in order to avoid the necessity of their having to be also passed again.

It will be observed that in computing whether or not a sufficient majority has been obtained regard must be had to the total voting power present at the Meeting and not to the total value of the votes given. For instance, if only half the voting power is cast at the first Meeting in favour of the Resolution and there are no dissentients, the other half abstaining from voting, the Resolution is not passed, the reason being that seventy-five per cent. of the voting power present has not been recorded in favour thereof. A bare majority of the votes is sufficient to carry the Resolution at the confirmatory Meeting.

A Special Resolution must, in the words of the Act, be passed "in manner required for the passing of an Extraordinary Resolution." The obvious intention of the

* *Railway Sleepers Supply Co.*, [1885] 29 Ch. D. 204.

† *McLaren v. Thomson*, [1917] 2 Ch. 261 (C. A.).

Act is that the Resolution shall be passed by a three-fourths majority at a General Meeting of which notice specifying the nature of the Resolution was duly given, and it has been judicially determined that the Notice of the first Meeting need not state that the Resolution will be submitted for passing as an Extraordinary Resolution.* Care must, however, be taken to indicate that the Resolution will be submitted for confirmation as a Special Resolution at a subsequent Meeting, and usually the Notice convening the first Meeting contains an intimation to the following effect :—

“ Should the above Resolution or any modification thereof be passed by the required majority, it will be submitted for confirmation as a Special Resolution to a subsequent Extraordinary General Meeting, which will be duly convened.”

Notice of a Meeting for the purpose of considering a Special Resolution is duly given if given in accordance with the Articles [Section 69 (6)].

Wherever practicable, the exact form of the Resolution intended to be submitted for passing or confirmation should be set out in the Notices convening the respective Meetings. If this is not done the nature of the business should be stated as precisely as possible, as otherwise any Resolution carried may be held to be invalid.†.

Before the passing of the Act of 1908 it was held that a Special Resolution, as defined by Section 51 of The Companies Act, 1862, need not be passed precisely in the form set out in the Notice. For example, it was held that a Resolution fixing the remuneration of the Directors at forty per cent. of the profits might be amended at the first Meeting by reducing the percentage

* Penarth Pontoon Co., [1911] W.N. 240.

† Normandy v. Ind, Coope & Co., [1908] 1 Ch. 84.

to thirty*; but the Meeting could not determine on any modification of the Resolution such as to cause it to exceed the scope of the Notice or to be in effect a different Resolution.†

The definition of a Special Resolution was somewhat modified by the Act of 1908, but it would appear that the principle on which the decisions in the cases cited were based still holds good. It has, however, been held in the case of a Resolution intended to operate as an Extraordinary Resolution (and therefore not intended to be submitted for confirmation as a Special Resolution) that such a Resolution is not duly passed unless the notice convening the Meeting sets out precisely the terms of the Resolution to be submitted to the Meeting‡ (*see* p. 91), and in view of this decision some authorities consider it doubtful whether the terms of a Resolution set out in a notice convening a Meeting to pass it as either an Extraordinary or a Special Resolution can be departed from. It is clear that no amendment of a Special Resolution can be made at the second Meeting, which must either confirm the Resolution as passed or reject it in its entirety. If there are several independent Resolutions, each one should be put separately, as at the first Meeting.

A poll may be demanded by three persons entitled to vote, unless the Articles prescribe a number not being more than five. Unless a poll is demanded the declaration of the Chairman that a Resolution has been carried is deemed conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the Resolution. In computing a majority when a poll is demanded, reference must be had to the number of votes to which each Member is entitled by the Articles [Section 69 (3), (4), and (5)].

* *Torbock v. Lord Westbury*, [1902] 2 Ch. 871.

† *Tæde and Bishop*, [1901] 70 L. J. Ch. 409.

‡ *McConnell v. E. Prill*, [1916] 2 Ch. 57.

It is generally advisable to give a separate notice of the second Meeting, setting out the Resolution in the form in which it is to be submitted for confirmation.

With a view to economy in clerical labour and postage, however, the two Meetings at which it is intended* to respectively propose and confirm a Special Resolution are sometimes convened by one Notice. This is in order if both Meetings are positively convened, although the practice is not to be recommended. But if the second Meeting is convened conditionally on the Resolution being passed at the first Meeting the Notice is not valid* unless authority to give conditional Notice is conferred by the Articles.† The difficulty can, however, be surmounted by giving a positive Notice of the Confirmatory Meeting and stating that if the Resolution should not be passed the Shareholders will be notified that the Meeting will not be held.‡

The rejection of a Special Resolution after it has been duly passed is a very rare occurrence, seeing that it would have to be opposed, whether actively or passively (by persons abstaining from voting), by more than half the number present, or (on a poll) by Members having at their disposal more than half the number of votes available; whereas a much weaker opposition at the first Meeting would have prevented the Resolution from being passed. Nevertheless, if there is any serious opposition it will be well to take precautions against a surprise attack. The number of votes at the disposal of the hostile group should be ascertained as nearly as possible and the attendance ensured of Members (in sufficient force to be in a position to demand a poll) with a larger number of votes at their command who may be relied upon to support the Resolution.

* *Alexander v. Simpson*, [1890] 43 Ch. D. 139.

† *North of England Steamship Co.*, [1905] 2 Ch. 15.

‡ *Espuela Land and Cattle Co.*, [1900] W. N. 139.

In cases where Resolutions are unanimously passed the Secretary should secure the attendance of a quorum of Members at the confirmatory Meeting: Many Special Resolutions have fallen to the ground because their confirmation has been regarded as a foregone conclusion and sufficient Members have not attended the second Meeting to form a quorum.

If the right to vote at General Meetings is conferred by the Articles on Debenture Holders it cannot be exercised on a Special Resolution being submitted for either passing or confirmation, as the statutory definition requires such a Resolution to be passed and confirmed by "Members."

A copy of every Special Resolution must be printed in proper form and filed with the Registrar of Companies within fifteen days after confirmation, the fee payable being 5s. The places where the Meetings were held should be specified as well as the dates on which they took place, and the copy has to be authenticated by the signature of an Officer. In case of default the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, will be liable to a penalty not exceeding £2 a day [Section 70 (1) and (4)].

A copy of every Special Resolution *for the time being in force* must be annexed to or embodied in every copy of the Articles issued after the date of its confirmation. But if there are no Articles (in which case the Company will be governed by the provisions of Table A) a printed copy of every Special Resolution must be supplied to any Member requesting the same on payment of 1s. [Section 70 (2) and (3)]. Failure to comply with these provisions renders the Company, and every Director and Manager knowingly and wilfully authorising or permitting the default, liable to a penalty not exceeding £1 for each copy in respect of which the default is made [Section 70 (5) and (6)].

The original Articles, it may be remarked, are not binding on the Company or the Members until registered.

but apparently Special Resolutions are in force as soon as they are confirmed, whether registered or not.

Special Resolutions as a general rule may be altered or rescinded by subsequent Special Resolutions; but it would seem that if a Company has determined by Special Resolution that a certain portion of its Share Capital shall not be capable of being called up except in the event of the Company being wound up, or has altered its Memorandum so as to make the liability of its Directors, Managers, or any Managing Director unlimited, such provisions will be unalterable.*

A Company may, moreover, be restrained from passing a Special Resolution if it would thereby commit a breach of contract. It has been held, for example, that where the Company's Articles gave the right to a Syndicate to nominate two of the Directors so long as the Syndicate held 5000 Shares of the Company, and there was a separate Agreement to that effect, the Company's Articles could not be altered so as to affect the Contract.†

A provision in Articles that certain Clauses are fundamental and unalterable is invalid, as the Members cannot by such a provision be deprived of their statutory right to alter the Articles.‡ It should be remembered, however, that the right to alter the Articles by Special Resolution is subject to any conditions contained in the Memorandum (Section 13).

Special Resolutions may be required by the Articles for any purpose, but the Act of 1908 prescribes them for the following purposes :—

Changing the name of a Company (Section 8).

Altering the Memorandum of Association with respect to its objects (Section 9).

* *Bartlett v. Mayfair Property Co.*, [1898] 2 Ch. 28.

† *British Murac Syndicate v. Alperton Rubber Co.*, [1915] 2 Ch. 186.

‡ *Walker v. London Tramways Co.*, [1879] 12 Ch. D. 705.

Altering or adding to the Articles of Association (Section 13).

Returning accumulated profits in reduction of paid-up Capital (Section 40).

Subdividing the Shares [Section 41 (2)].

Reorganising the Share Capital (Section 45).

Reducing the Capital (Section 46).

Determining that a portion of the Capital shall only be capable of being called up in the event of the Company being wound up (Section 59).

Making the liability of the Directors unlimited (Section 61).

Appointing Inspectors to investigate the affairs of a Company (Section 110).

Converting a Private Company into a Public Company [Section 121 (2)].

Having the Company wound up by the Court (Section 129).

Winding up voluntarily [Section 182 (2)]. (*See also p. 259.*)

Sanctioning sale of assets by Liquidator for Shares of purchasing Company (Section 192).

STAMP DUTIES.

Stamp duties on Deeds and other Instruments are imposed by The Stamp Act, 1891, and various amending Statutes, of which The Finance (1909-10) Act, 1910, and The Finance Act, 1920, are the more important. The latter two substantially increased the duties payable on certain documents. The duties principally affecting Companies are set out in the appropriate places in this book, but the following additional information may be of service, together with the Table of *ad valorem* duties set out on pages 228 and 229, which is based on an official form.

If any person enrolls, registers, or enters any instrument chargeable with duty which is not duly stamped he

will be liable to a fine of £10 (Stamp Act, 1891, Section 17). In any case of doubt the instrument should be submitted for adjudication under the provisions of Section 12 of The Stamp Act, 1891.

Any person renders himself liable to a fine of £10 if he with fraudulent intent executes an instrument in which all the facts and circumstances affecting its liability to duty are not fully stated, or, being employed or concerned in the preparation of any instrument, neglects to set forth such facts and circumstances (Stamp Act, 1891, Section 5).

Every "Public Officer" (which includes Officers of Companies) having in his custody records, papers, &c., the inspection whereof may prove or lead to the discovery of any fraud or omission in relation to any duty, must permit any person authorised by the Commissioners of Inland Revenue to inspect such documents when requested so to do. The penalty for refusal is £10 for every offence (Stamp Act, 1891, Section 16).

A document which is not properly stamped cannot be put in evidence except in criminal proceedings, and (if it is an instrument which may legally be stamped after execution) it can only be stamped after the expiration of the due time upon payment of the prescribed penalty. If a document chargeable with duty is tendered in evidence while unstamped, there is a further penalty of £1 payable, and a fine is also imposed upon the person whose duty it was to see to the stamping (Stamp Act, 1891, Sections 14 and 15).

Unless a document is properly stamped it will not be received for registration by the Registrar of Companies.

Agreements.—The duty on Agreements under Hand is Sixpence, and on those under Seal Ten Shillings. But if the Agreement is for the sale of any property other than land (unencumbered), goods, wares, or merchandise, &c., it is chargeable with *ad valorem* Conveyance duty, as explained on pp. 5 to 9. An

Agreement under Hand, the matter whereof is not of the value of £5, or for the hire of a labourer, artificer, manufacturer, or menial servant, or relating to the sale of goods, wares, or merchandise, does not require any stamp.

•Underwriting Letters and Guarantees are Agreements and chargeable accordingly. If, however, an Underwriting Agreement is under Seal and contains an undertaking to pay a definite sum of money, it must be stamped with Covenant duty at the rate of Two Shillings and Sixpence for every £100.

Agreements for or relating to the supply of goods on hire, whereby the goods, in consideration of periodical payments, will or may become the property of the person to whom they are supplied, are chargeable with Stamp Duty as Agreements, or, if under Seal, as Deeds (Finance Act, 1907, Section 7).

Deeds and all Instruments under Seal not specially charged with duty, require a Ten Shilling stamp.

Conveyances.—The duty on Conveyances or Transfers on Sale generally is at the rate of One Pound per cent., as set out on page 228. Where, however, the instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500, duty is payable at half that rate.

For the purpose of Stamp Duty the expression "Conveyance" includes every instrument and every Decree or Order of any Court or of any Commissioners whereby any property, upon the sale thereof, is transferred to or vested in the purchaser, or any person on his behalf or by his direction. There are special provisions where the consideration is an Annuity, as to which see Section 56 of The Stamp Act, 1891. When

property is conveyed either in consideration of any debt or charged with or subject to any payment, the debt or payment is treated as part of the consideration.

Reconveyances &c.—A Reconveyance, Release, Discharge, Surrender, or Renunciation of any Security must bear duty at the rate of Sixpence for every £100 or part of £100; but a receipt endorsed on a Stamped Instrument acknowledging that the principal and interest secured has been paid is exempt from duty (Stamp Act, 1891, *Schedule*).

Transfers of Mortgages &c.—Transfers of Mortgages, Bonds, or Covenants (not being Marketable Securities) are chargeable with duty at the rate of Sixpence for every £100, and, if the amount lent is increased, with the addition of the same duty on the amount of the increase as on an original Mortgage (Stamp Act, 1891, *Schedule*). Transfers of Shares, Stock, or Marketable Securities are chargeable with the duties set out on page 228.

Marketable Securities generally (not being Colonial Government Securities) are chargeable with duty at the rate of Four Shillings for every £10, but where the amount secured is to be paid off within a term not exceeding one year after the date on which the duty is payable the rate is only Sixpence, or if the term is more than one year, but does not exceed three years, the rate is One Shilling. The date for redemption must be conspicuously stated on the face of the security.

If a Marketable Security on which duty at either of the reduced rates has been paid is assigned, transferred, or negotiated in the United Kingdom after the date specified for redemption it will be liable to duty at the full rate, allowance being made for the amount already paid. The penalty for default in paying the additional duty is £20 (Finance Act, 1911, Section 13).

Contract Notes.—The stamps to be affixed on Contract Notes for or relating to the sale or purchase of any Stock

or Marketable Security must be in accordance with the following scale :—

Where the value of the Stock or Marketable Security—

						£	s.	d.
Is	£5	and does not exceed	£100 ...			0	0	6
Exceeds	£100	„ „	£500 ...			0	1	0
„	£500	„ „	£1,000 ...			0	2	0
„	£1,000	„ „	£1,500 ...			0	3	0
„	£1,500	„ „	£2,500 ...			0	4	0
„	£2,500	„ „	£5,000 ...			0	6	0
„	£5,000	„ „	£7,500 ...			0	8	0
„	£7,500	„ „	£10,000 ...			0	10	0
„	£10,000	„ „	£12,500 ...			0	12	0
„	£12,500	„ „	£15,000 ...			0	14	0
„	£15,000	„ „	£17,500 ...			0	16	0
„	£17,500	„ „	£20,000 ...			0	18	0
„	£20,000					1	0	0

A separate stamp is necessary for each description of Stock. If the value of the Stock or Marketable Security sold or purchased is £5 or upwards, no brokerage can be recovered unless a Note has been made and duly stamped.

The stamps on Contract Notes are adhesive and the necessary amounts may be made up by using several stamps of a lower denomination. Cancellation is effected in the ordinary way.

The duty on an Option Note is one half of that payable on a Contract Note. In the case of a double option, however, the Note is regarded as a separate contract in respect of each option.

A Contract Note made pursuant to a duly stamped option requires stamping with duty at half the prescribed rate.

Continuation or carrying-over notes, although made in respect of both a sale and purchase, are chargeable with duty in respect of one of the transactions only. Duty at the higher rate must be paid where the rates differ.

Adhesive Stamps.—Where the duty does not exceed Two Shillings and Sixpence Adhesive Stamps may be used on the following documents: Agreements under Hand the duty on which is Sixpence, Bills of Exchange

payable on demand, at sight, on presentation, or within three days after date or sight, and Foreign Bills, Charter-parties, Cheques, Contract Notes, Leases of Dwelling-houses at rents not exceeding Forty Pounds per annum, or Furnished Dwelling-houses or Apartments, Letters of Renunciation, Notarial Acts, Policies (other than Life or Sea), Protests of Bills of Exchange, Proxies liable to duty of One Penny, Receipts, Transfers of Shares in Cost Book Mines, Voting Papers, and Warrants for Goods. Specially appropriated Stamps are required for Bills of Exchange payable otherwise than as above and Contract Notes. Adhesive stamps must, with a few exceptions, be cancelled by the first person executing or using the instrument writing on or across the Stamp his name or initials or the name or initials of his firm, together with the true date of his so writing. In the case of a Foreign Bill or Note, cancellation must be effected by the person into whose hands it comes before it is stamped, and a Charter-party must be cancelled by the person last executing the same, or by whose execution it is completed as a binding contract.

Unless the stamp is cancelled in such manner or otherwise effectually cancelled, the instrument, in the absence of proof that the Stamp was affixed at the proper time, is not duly stamped.

Impressed Stamps must be placed on Bills of Exchange payable otherwise than on demand, at sight, on presentation, or within three days after date or sight, Promissory Notes, Letters of Allotment, Scrip, and Provisional Certificates, on all Deeds, and on all instruments charged with *ad valorem* duty.

Spoiled Stamps.—An allowance is made in respect of Stamps inadvertently spoiled, within two years from the manuscript date, upon the prescribed statutory declaration being made and presented at the Stamp Office, Cancel Branch, Somerset House. Transfers which have been spoiled or become useless within two years may be

exchanged on mere presentation, if unsigned. A spoiled instrument must be presented in a complete state, without any mutilation whatever.

Time for Stamping.—Some instruments must be stamped *before execution or issue*, of which the following should be noted:—Bills of Exchange and Promissory Notes, Contract Notes, Letters of Allotment and Renunciation, Proxies, Receipts, Scrip, and Scrip Certificates, Share Warrants, and Voting Papers executed in the United Kingdom. It should also be noted that the Officials claim the full penalty of £10 where it is desired to stamp after execution a Contract for the Sale of Land containing a provision to the effect that no objection or requisition shall be made on account of any deed or document dated previous to The Customs and Inland Revenue Act, 1888, being unstamped or insufficiently stamped.

Instruments not being of the above description liable to *ad valorem* duty must be stamped *within thirty days after execution*. There is no statutory provision allowing Agreements under hand liable to the fixed duty of Sixpence to be stamped without penalty, but (with the exception of Contracts for the Sale of Land containing the provision above referred to) all such documents may be stamped within fourteen days after execution. In the case of Instruments executed abroad the time for stamping runs from the date of their first arrival in the United Kingdom.

If not duly stamped within the proper time, a document may subsequently be stamped on payment of the unpaid duty and a penalty not exceeding £10, and in addition, if the unpaid duty exceeds, £10, of interest on such duty at the rate of Five per cent. *per annum*. Policies of Sea Insurance executed and not stamped before execution may be stamped afterwards for the purposes of evidence with a penalty of £100. The Commissioners may remit or mitigate the penalty upon good cause being shown.

The following Table shows the rates of Duties on Transfers of Shares and Conveyance of Property, and on Debentures and Bills of Sale and Promissory Notes. For full information as to stamp duties *see* Alpe's "Law of Stamp Duties."

Amount not exceeding	Transfers of Shares or other Marketable Securities.	Conveyance or Transfer other than those in Column 2.	Debentures and Mortgages.	Bills or Promissory Notes.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 1 0	*0 0 6	0 0 3	0 0 2
10	0 2 0	*0 1 0	0 0 3	0 0 2
15	0 3 0	*0 1 6	0 0 8	0 0 3
20	0 4 0	*0 2 0	0 0 8	0 0 3
25	0 5 0	*0 2 6	0 0 8	0 0 3
50	0 10 0	*0 5 0	0 1 3	0 0 6
75	0 15 0	*0 7 6	0 2 6	0 0 9
100	1 0 0	*0 10 0	0 2 6	0 1 0
125	1 5 0	*0 12 6	0 3 9	0 2 0
150	1 10 0	*0 15 0	0 3 9	0 2 0
175	1 15 0	*0 17 6	0 5 0	0 2 0
200	2 0 0	*1 0 0	0 5 0	0 2 0
225	2 5 0	*1 2 6	0 6 3	0 3 0
250	2 10 0	*1 5 0	0 6 3	0 3 0
275	2 15 0	*1 7 6	0 7 6	0 3 0
300	3 0 0	*1 10 0	0 7 6	0 3 0
350	3 10 0	*1 15 0	0 10 0	0 4 0
400	4 0 0	*2 0 0	0 10 0	0 4 0
450	4 10 0	*2 5 0	0 12 6	0 5 0
500	5 0 0	*2 10 0	0 12 6	0 5 0
550	5 10 0	5 10 0	0 15 0	0 6 0
600	6 0 0	6 0 0	0 15 0	0 6 0
650	6 10 0	6 10 0	0 17 6	0 7 0
700	7 0 0	7 0 0	0 17 6	0 7 0
750	7 10 0	7 10 0	1 0 0	0 8 0
800	8 0 0	8 0 0	1 0 0	0 8 0
850	8 10 0	8 10 0	1 2 6	0 9 0
900	9 0 0	9 0 0	1 2 6	0 9 0
950	9 10 0	9 10 0	1 5 0	0 10 0
1000	10 0 0	10 0 0	1 5 0	0 10 0
Above } 1000 }	10s. per £50 or fractional part of £50	10s. per £50 or fractional part of £50	2s. 6d. per £100 or fractional part of £100	1s. per £100 or fractional part of £100

* The above-mentioned rates of duty for Conveyances from £5 to £500 apply only where the instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction, or of a series of transactions, in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £500. In the absence of such a statement double the amount of duty must be paid.

Amount not exceeding	LEASE.			
	Premium on Lease.	Rent—Term not exceeding 35 years or indefinite.	Rent—Term exceeding 35 years but not exceeding 100 years.	Rent—Term exceeding 100 years.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	*0 0 6	0 1 0	0 6 0	0 12 0
10	*0 1 0	0 2 0	0 12 0	1 4 0
15	*0 1 6	0 3 0	0 18 0	1 16 0
20	*0 2 0	0 4 0	1 4 0	2 8 0
25	*0 2 6	0 5 0	1 10 0	3 0 0
50	*0 5 0	0 10 0	3 0 0	6 0 0
75	*0 7 6	0 15 0	4 10 0	9 0 0
100	*0 10 0	1 0 0	6 0 0	12 0 0
125	*0 12 6	1 10 0	9 0 0	18 0 0
150	*0 15 0	1 10 0	9 0 0	18 0 0
175	*0 17 6	2 0 0	12 0 0	24 0 0
200	*1 0 0	2 0 0	12 0 0	24 0 0
225	*1 2 6	2 10 0	15 0 0	30 0 0
250	*1 5 0	2 10 0	15 0 0	30 0 0
275	*1 7 6	3 0 0	18 0 0	36 0 0
300	*1 10 0	3 0 0	18 0 0	36 0 0
350	*1 15 0	3 10 0	21 0 0	42 0 0
400	*2 0 0	4 0 0	24 0 0	48 0 0
450	*2 5 0	4 10 0	27 0 0	54 0 0
500	*2 10 0	5 0 0	30 0 0	60 0 0
550	5 10 0	5 10 0	33 0 0	66 0 0
600	6 0 0	6 0 0	36 0 0	72 0 0
650	6 10 0	6 10 0	39 0 0	78 0 0
700	7 0 0	7 0 0	42 0 0	84 0 0
750	7 10 0	7 10 0	45 0 0	90 0 0
800	8 0 0	8 0 0	48 0 0	96 0 0
850	8 10 0	8 10 0	51 0 0	102 0 0
900	9 0 0	9 0 0	54 0 0	108 0 0
950	9 10 0	9 10 0	57 0 0	114 0 0
1000	10 0 0	10 0 0	60 0 0	120 0 0
Above } 1000 }	10s. per £50 or fractional part of £50	10s. per £50 or fractional part of £50	£3 per £50 or fractional part of £50	£6 per £50 or fractional part of £50

STANNARIES.

Companies composed of more than twenty persons may still be formed for the purpose of working metal mines in Devon and Cornwall without being registered under the Companies Acts, but cases of this kind are exceedingly

* The above-mentioned rates of duty for premiums on Leases apply only where (a) The instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction, or of a series of transactions, in respect of which the amount or value, or the aggregate amount or value, of the consideration other than rent exceeds £500; and (b) The rent (where part of the consideration consists of rent) does not exceed £20 a year. Where these conditions are not complied with double the amount of duty must be paid.

rare. Formerly registrable in London or Truro, they must now be registered in London. The Court established by the Stannaries Acts, under which such Companies are formed, has been abolished, and its duties are discharged by the Cornish County Courts. The Companies are worked under the "Cost Book System," which *inter alia* permits a Member whose Shares are fully paid up to transfer his Shares without reference to any other holder of Shares, and allows him to terminate his liability at any time, except during the six weeks immediately preceding a winding-up, by simply giving up his Share holding.

When several Companies are in course of liquidation by or under the superintendence of the Court exercising the Stannaries jurisdiction and acting under that jurisdiction, and a Contributory of one of the Companies is also a Creditor of one of the other Companies, his debt, when allowed, may be attached and payment suspended for a time as security for payment of any Calls due from such person to the Company of which he is a Contributory (Section 239).

On the winding up of a Company within the Stannaries, contributions of miners, artisans, or labourers for the purposes of a mine club, or accident, sick, or benefit fund are not deemed to be part of the assets of the Company. They must be accounted for by the person in possession of the fund to the Liquidator, who must apply the moneys in strict accordance with the rules of the club. In cases of doubt the Liquidator may apply to the Court for directions (Section 241).

As to preferential payments in the winding up of Companies in the Stannaries *see* PREFERENTIAL PAYMENTS.

STATEMENT IN LIEU OF PROSPECTUS.

Every Public Company not issuing a Prospectus on or with reference to its formation must cause to be filed with the Registrar a duly signed Statement in Lieu of

Prospectus, setting out particulars similar to those required in a Prospectus. The prescribed form of Statement appears in Schedule II. to the Act of 1908 (*see* pp. 386 and 387). This Statement must be signed by every person named therein as a Director or proposed Director or by his duly authorised agent. Until the document has been filed no Shares or Debentures may be allotted (Section 82), and any such allotment is entirely void.* Contracts referred to in this Statement may only be varied prior to the Statutory Meeting subject to approval of that Meeting (Section 83).

Although many of the Paragraphs are inappropriate, a Statement in Lieu of Prospectus must be filed by all Companies not having a Share Capital, as they cannot come within the statutory definition of a Private Company.

On a Private Company being converted into a Public Company a Statement in Lieu of Prospectus must be filed (*see* p. 173).

STATEMENT IN THE FORM OF A BALANCE SHEET.

Public Companies having a Share Capital must include in each Annual Return of Capital and Members a Statement in the form of a Balance Sheet, duly audited, containing a summary of its Capital, its liabilities, and its assets, and made up to such date as may be specified in the Statement. The general nature of the liabilities and assets must be disclosed and the way in which the values of the fixed assets have been arrived at stated [Section 26 (3)]. Although, as mentioned above, the Statement must be audited, the Act does not require the Auditor's Report (if any) on this Statement to be filed.

The assets must not be lumped together where different principles are adopted in arriving at their values. For example, the considerations that apply to machinery,

* *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.

furniture, and fixtures, and other tangible assets are not applicable to intangible assets, such as goodwill and trade marks; and if different principles are adopted according to the nature of the assets, their values must be set out separately.* For the purpose of indicating how the values of the fixed assets have been arrived at the words "at cost," "at cost, less depreciation," "at valuation by," or as the case may be should be added. It would not be sufficient to merely insert the words "less depreciation" against any item representing a fixed asset. Goodwill and investments generally must be treated as fixed assets unless the nature of the investments is indicated and clearly shows that they are not fixed assets. A statement of profit and loss is not required to be furnished.

The foregoing requirements do not apply to Assurance Companies which have filed with the Registrar copies of the Accounts and Balance Sheets required to be deposited with the Board of Trade in accordance with the provisions of Section 7 of The Assurance Companies Act, 1909.

Similar Statements must be filed by Companies incorporated outside the United Kingdom and having a place of business in the United Kingdom [Section 274 (3)] and Assurance Companies constituted abroad carrying on assurance business in the United Kingdom, whether incorporated or not (Assurance Companies Act, 1909). Where such a Company brings itself within the definition of the expression "Private Company" the Registrar does not require a Statement.

STATUTORY MEETING.

Every Company Limited by Shares must hold a General Meeting of its Members (described as "the Statutory Meeting") within a period of not less than one month

* *Galloway v. Schill, Seeborn & Co.*, [1912] 2 K. B. 354.

nor more than three months from the date at which it is entitled to commence business—*i.e.* the date of Incorporation, or the date of the Registrar's Trading Certificate, according to whether the Company is a Private or Public one [Section 65 (1)]. The notice calling the Meeting should state that the "Statutory Meeting" is to be held, otherwise there will not be due compliance with the Act.*

In the case of a Public Company there must be forwarded to every Member and Debenture Holder, at least seven days before the Meeting, a Report (called "the Statutory Report") setting out various particulars as to the Shares allotted, the amount of cash received in respect thereof, an abstract of the receipts and payments on Capital Account, an account or estimate of the Preliminary Expenses, the names, &c., of the Directors or other Officers, and particulars of the modification of any Contract to be submitted to the Meeting. Immediately after the Report has been sent out a copy must be filed with the Registrar [Sections 65 (3), (5), and 114].

The Report has to be certified by not less than two Directors (or by the sole Director), and by the Auditors (if any) in so far as it relates to the Shares allotted, cash paid thereon, and receipts and payments on Capital Account [Section 65 (3) and (4)].

In the case of a Private Company the Report need not be forwarded to the Members or Debenture Holders or filed with the Registrar [Section 65 (19)]. Neither would there seem to be any occasion for such a document to be prepared, Mr. Justice Parker having held that the provisions of the Act relating to the Report have no application to Private Companies.*

At the commencement of the Statutory Meeting the Directors must cause a List showing the names, addresses, and descriptions of the Members and their holdings to be

* *Gardner v. Iredale*, [1912] 1 Ch. 700, 711.

produced, and the List must remain open and be accessible to any Member during the continuance of the Meeting. The Members present will be at liberty to discuss any matter relating to the formation of the Company or arising out of the Report, whether previous notice has been given or not, but no Resolution of which notice has not been given in accordance with the Articles may be passed. The Meeting may also be adjourned, and any Resolution of which notice has been duly given, either prior or subsequent to the former Meeting, may be passed [Section 65 (6), (7), and (8)].

No Contract which is referred to in a Prospectus or Statement in Lieu of Prospectus may be varied previously to the Statutory Meeting, except subject to the approval of such Meeting (Section 83).

Allotments of Shares by Public Companies which are irregular owing to the minimum subscription not having been subscribed are voidable within one month after the Statutory Meeting (*see* p. 146).

In the event of default in holding the Statutory Meeting or filing the Report the Court may on presentation of a petition direct that the Company be wound up, or that a Meeting be held or the Report filed, or may make such other Order as may be just, and may also order that the costs of the petition be paid by those responsible for the default [Sections 65 (9) and 129 (2)]. Only a Shareholder may petition for winding up, and he cannot do so before the expiration of fourteen days after the last day on which the Meeting ought to have been held [Section 137 (1)].

An Annual Return is not required to be filed in respect of the Statutory Meeting unless the Meeting is described by the Articles or conveyed by the Notice as an Ordinary Meeting. In practice the Registrar does not demand a Return after the Statutory Meeting.

Companies Limited by Guarantee and Unlimited Companies are not required to hold a Statutory Meeting.

STOCK.

A Company Limited by Shares may, if the Articles so provide, convert all or any of its fully paid Shares into Stock, and such Stock may be reconverted into Shares (Section 41).

Stock is included in the references to "Shares," except where a distinction between Shares and Stock is expressed or implied (Section 285).

See also CONVERSION OF SHARES INTO STOCK.

SUBDIVISION OF SHARES.

If authority is contained in its Articles a Company Limited by Shares may subdivide all or any of its Shares into Shares of smaller amount than is fixed by the Memorandum of Association, provided that the proportion paid and unpaid on each reduced Share remains the same as it was in the case of the Share from which the reduced Share is derived. The power can only be exercised by Special Resolution, and if the original Articles do not contain the requisite authority they must first be altered by Special Resolution [Section 41 (1) and (2)].

The statement of the number and amount of the Shares into which the Capital is divided contained in every copy of the Memorandum subsequently issued must be in accordance with the alteration. The penalty for failure to comply with this requirement is £1 for each copy in respect of which default occurs [Section 41 (3)].

A Company Limited by Guarantee and having a Share Capital, incorporated after 1900, cannot subdivide its Shares, but if incorporated before 1901 it can do so by altering its Articles.

See also REORGANISATION OF CAPITAL.

SUBSCRIBERS TO MEMORANDUM OF ASSOCIATION.

Seven Subscribers at least are required to sign the Memorandum of Association of a Public Company; but two Subscribers suffice in the case of a Private Company (Section 2). The Subscribers must be "persons," and therefore if the Memorandum be signed by or on behalf of corporations or firms their names must be additional. This rule holds good also where Shares are signed for in the joint names of either corporations, firms, or individuals. Married women and foreigners* may subscribe; but minors should not be permitted to do so, as they are entitled on or before attaining their majority to repudiate the Shares.

If the Company has a Share Capital each Subscriber to the Memorandum must also write opposite his name the number of Shares he agrees to take, one being the minimum (Sections 3, 4, and 5). Usually a subscriber signs for only one Share, but he is at liberty to sign for any number for which he is prepared to pay. Payment may be made to the Company either in money or in money's worth.†

A Subscriber cannot obtain annulment of his contract to take a Share or Shares in the Company on the ground that there has been misrepresentation by a Promoter. At the time of signing the Memorandum the Company has not been incorporated, and accordingly cannot be liable for misrepresentation.‡

Subscribers are deemed to have agreed to become Members, and on incorporation their names must be entered in the Register of Members (Section 24). Formal application need not be made for Shares signed for in the Memorandum, nor need any formal allotment be made

* General Company for the Promotion of Land Credit, [1870] L. R. 5 Ch. 363.

† Baglan Hall Colliery Co., [1870] L. R., 5 Ch. 346, 355.

‡ Lord Lurgan's Case, [1902] 1 Ch. 707.

by the Company.* The liability of the Subscriber to pay for his Shares will not be cancelled unless the whole of the Share Capital has been allotted to other persons. Should this event occur he cannot be made liable again if the Company subsequently has Shares available as the result of increasing its Capital or otherwise.†

The full postal address and the description of each Subscriber must be given in the Memorandum and the signatures must be attested by one or more witnesses, whose addresses and descriptions are also required.

The Subscribers of the Memorandum must also sign the Articles of Association, and their signatures should be attested in the manner mentioned.

TABLE A.

Companies not having special Articles, registered on or after the 1st April, 1909, are governed by the Regulations contained in Table A in the First Schedule to the Act (Section 11). If registered since the 30th September, 1906, and before the 1st April, 1909, the Revised Table A, adopted by the Board of Trade in 1906, applies to such Companies; but if registered prior to the 1st October, 1906, the original Table A, in the First Schedule to The Companies Act, 1862, applies. The original Table is obsolete in many respects, but the later Tables contain most of the Regulations required by small Companies, and may with advantage be adopted with a few modifications. Where Table A applies, wholly or in part, a copy should be attached to every copy of the Memorandum and Articles of Association (if any).

TRADE UNION.

The term "Trade Union" is defined by Section 16 of The Trade Union Act Amendment Act, 1876, and Sub-section (2) of Section 1 and Sub-section (1) of

* London and Provincial Consolidated Coal Co., [1877] 5 Ch. D. 525.

† Tal y Drws Slate Co., Mackley's Case, [1877] 1 Ch. D. 247.

Section 2 of The Trade Union Act, 1913, as any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects, namely the regulation of the relations existing between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

Registration under the Companies Acts is not permissible (Trade Union Act, 1871, Section 5), and, if it were in fact obtained, would be ineffective,* and the Trade Union would be unable to exercise the powers granted under those Acts. For example, it could not sue. The proper course is to register under The Trade Union Act, 1871.

In practice the Registrar declines to pass the Memorandum of any Company containing powers which appear to be characteristic of a Trade Union.

A Trade Union cannot be wound up by the Court under the provisions of the Companies Acts, even if it has been inadvertently registered thereunder.

See also under MEMORANDUM OF ASSOCIATION.

TRANSFERS BY WAY OF MORTGAGE.

Transfers executed under Seal by way of Mortgage of any Stock, Shares, Funded Debt, or Marketable Security of any kind are chargeable, if the loan be disclosed in the Deed of Transfer, with *ad valorem* mortgage duty. If the loan be not specified in the Deed of Transfer, so as to attract the foregoing duty, there must be a further instrument to disclose the transaction. In such a case the Deed of Transfer must be stamped with the duty of 10s., and the further instrument if under hand is liable to the

* British Association of Glass Bottle Manufacturers, Limited v. Nettlefold, [1911] 27 T. L. R. 527.

duty of 6d., but if under Seal it attracts mortgage duty (Stamp Act, 1891, Sections 23 and 86). Where, however, such Deed of Transfer is without an accompanying instrument, the transferee will have to declare it to be a Mortgage, and to stamp it accordingly in order to avoid a claim for duty at the higher rate payable on a Transfer on Sale.

The term "Marketable Security" means a security of such a description as to be capable of being sold in any Stock Market in the United Kingdom (Stamp Act, 1891, Section 122), although the security may not be quoted in any Official List. Registered Bonds and Debentures, generally, of Companies, Corporations, and Public Bodies are therefore included in the expression.

TRANSFERS OF DEBENTURES.

Debentures not containing a charge may be transferred by an instrument of transfer under hand only, but the instrument must be under Seal where the Debentures confer a charge on freehold or leasehold property.

The title to a "Debenture to Bearer" passes on delivery.

Where, with the object of keeping Debentures alive for the purpose of reissue they have been transferred to a nominee of the Company, a transfer from that nominee is deemed to be a reissue. The reissued Debentures are liable to stamp duty as though they were new instruments (Section 104).

The Company must have the Debentures, or if Debenture Stock is transferred the new Certificates, ready for delivery to the transferees within two months after the transfers are registered, unless the conditions of issue otherwise provide (Section 92).

Duty is payable on a transfer of Debentures at the same rate as on a transfer of Shares (*see* p. 228).

TRANSFERS OF SHARES.

Members of a Company are at liberty to transfer Shares in the manner provided by the Articles of Association and subject to the restrictions contained therein. Transfers made while a Company is being wound up voluntarily are, however, void unless the sanction of the Liquidator is first obtained; and where a Company is being wound up by the Court or under its supervision, any transfer made after the commencement of the liquidation is void unless the Court otherwise orders (Section 205).

Except in the case of Private Companies (*see* p. 171) there is no statutory obligation on Companies to restrict the right of Members to transfer Shares. It is, however, always desirable to have some restriction, the nature thereof depending on the circumstances of each case. In almost every instance the Articles will be found to contain provisions authorising the Directors in their discretion or in certain well-defined circumstances to decline to register transfers.

If a Form of Transfer is prescribed it must be adhered to. The preparation in ordinary cases should be undertaken by the transferee.* The instrument has generally to be signed by both the transferor and transferee, whose signatures should be attested by a witness. The signature of the transferee is very desirable, as it is evidence that he has agreed to become a Member of the Company and can be entered on the Register [*see* Section 24 (2)]. The transfer and Share Certificate must then be lodged with the Company, by whom they will be retained, a Guard Book being usually kept for the purpose. Secretaries should carefully examine instruments of transfer to see that they are

* *Birkett v. Cowper Coles*, [1919] 35 T. L. R. 298.

properly executed and duly stamped. Unless otherwise arranged, the amount of duty is payable by the transferee.

If the transferee of a Share or other interest in a Company fails to apply for registration of the transfer, the application may be made by the transferor, and the name of the transferee must be entered in the Register of Members (subject, of course, to the restrictions on transfer prescribed by the Articles) as if the application were made by him (Section 28). Upon registration of the transfer, the beneficial interest in the Shares passes to the transferee, and the transferor ceases to be a Member of the Company. If the Shares are not fully paid up and no Calls are in arrear the liability attaching to them is assumed by the transferee; but if the Company should go into liquidation within a year after the transfer and the transferee be unable to pay any Calls made by the Liquidator the transferor may not escape liability (*see* p. 42).

If Shares are transferred subject to a Call which, though made, has not been paid, the transferor is not relieved of his liability. Usually, however, the Directors will not sanction the transfer until the unpaid Call has been satisfied.

A proposed transfer to a minor should not be approved, particularly where the Shares are only partly paid up, for a minor can repudiate the Shares either on or before coming of age.*

A transfer of the Shares of a deceased Member made by his personal representative is as valid as if the representative were himself a Member at the time of the execution of the instrument (Section 29).

The new Share Certificates must be ready for delivery within two months after the registration of the transfer, unless the conditions of issue otherwise provide (Section 92).

* *Hamilton v. Vaughan Sherrin Co.*, [1894] 3 Ch. 589; *Steinberg v. Scala* (Leeds), Limited, [1923] 2 Ch. 452.

A blank transfer,* executed under hand only, is sometimes given as security for a loan, and it is lawful for the holder of the transfer, where the regulations do not require the transfer to be by deed, to fill up the blank if occasion arises.†

If a transfer is not registered in the books of the Company the Register may be rectified by the Court either before or after the Company has gone into liquidation. The Court may also rectify mistakes (Section 32).

Transfers may be stopped by any person interested giving notice in legal form to the Company.

Instruments of Transfer must be stamped within thirty days after execution, or, if executed abroad, within thirty days after receipt in the United Kingdom (Stamp Act, 1891, Section 15).

Transfers on sale of Shares, Stock, or Marketable Securities of any kind are required by The Stamp Act, 1891, to be impressed with *ad valorem* stamp duty. The duty set out in the Schedule to the Act has been increased by the joint effect of The Finance (1909-1910) Act, 1910, and The Finance Act, 1920, and is set out on p. 228.

A transfer of Shares, Stock, or Marketable Securities by way of gift *inter vivos* is chargeable with *ad valorem* stamp duty at the same rate as if it were a Transfer on Sale, with the substitution of the value of the Stock or Securities for the consideration. Section 74 of The Finance (1909-10) Act, 1910, requires such instruments to be submitted for adjudication, but the Board of Inland Revenue have intimated that they will offer no objection to the instruments being registered without bearing the adjudication stamp, if they are stamped with *ad valorem* duty upon the market value of the Shares or Securities at

* As to such transfers, see *Fry v. Smellie*, [1912] 3 K. B. 282.

† *Tahiti Cotton Co., ex parte Sargent*, [1874] L. R. 17 Eq. 273.

the date of execution, the Registering Officer being at liberty to obtain the adjudication stamp at any time subsequently should necessity arise.

Instruments of transfer are exempt from *ad valorem* duty and liable only to a Deed Stamp of 10s. when the transaction falls within one of the following descriptions :—

- (a) On the appointment of a new Trustee of a pre-existing Trust, or on the retirement of a Trustee.
- (b) A transfer, as for a nominal consideration, to a mere nominee of the transferor where no beneficial interest in the Shares passes.
- (c) A security for a loan, or a re-transfer to the original transferor on repayment of a loan.
- (d) A transfer to a residuary legatee of Shares which form part of the residue divisible under a will.
- (e) A transfer to a beneficiary under a will of a *specific* legacy of Shares.
- (f) A transfer of Shares, being the property of a person dying intestate, to the party or parties entitled thereto.
- (g) A transfer to a beneficiary under a settlement, on distribution of the trust funds, of Shares forming the proportion, or part thereof, of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

In cases (b) and (c) a certificate setting forth the facts of the transaction should be obtained before the instrument is registered.

The Certificate should be signed by (1) both transferor and transferee, or (2) either a member of a Stock Exchange or a Solicitor acting for one or other of the parties, or (3) an accredited representative of a Bank, where the Bank or its official nominee is a party to the transfer. In the last case the Certificate may be to the effect that "the transfer is excepted from Section 74 of The Finance (1909-10) Act, 1910."

It must, however, be remembered that the fixed duty of 10s. does not apply to transfers made in distributing estates of deceased persons, except when they fall within one of the descriptions (d), (e), and (f), mentioned above. Accordingly, any transfer of Shares made by the executors of a will in satisfaction, in whole or in part, of a *pecuniary legacy*, is chargeable with *ad valorem* duty at the rate of £1 per £100 on the amount of the legacy, or of such part of it as is discharged by the transfer, and this amount should be set forth in the instrument as the consideration for the transfer. Similarly, if a transfer is made in liquidation of a debt, or in exchange for other securities, *ad valorem* duty is payable on the value or agreed value of the consideration.

Registering Officers of Companies must satisfy themselves that all instruments of transfer are adequately stamped before registration (Stamp Act, 1891, Section 17).

Where a Registering Officer has reasonable doubt as to the sufficiency of the duty paid, and the parties decline to give the information necessary to enable him to satisfy himself on the point, he should require the Adjudication Stamp to be impressed on the instrument before registering the transfer.

A transfer of a Share in the Colonial Register of a Company is exempt from British stamp duty unless the instrument is executed in the United Kingdom (Section 36).

See also under FORGERY, PERSONATION, &c., and RECTIFICATION OF REGISTER.

TRANSMISSION OF SHARES.

Upon the death of a Member the right to deal with his Shares passes to his Executors or Administrators. The Grant of Probate or Letters of Administration must be produced to the Company, and the Secretary

should endorse the Grant with a memorandum of the production and enter in the Register the date of death and the names of the Executors or Administrators

Unless the Articles of Association provide (as in Clause 22 of Table A, 1908) that the Directors may decline or suspend registration, the Executors or Administrators are entitled, after proving their title, to be registered as Members,* and the Company is bound on request to enter their names in the Register without any reference to the fact that they hold the Shares in a representative capacity.† Moreover, the Company must enter the names in such order as the Executors or Administrators require,‡ a right which is of importance, as it is upon this order that the right to vote and receive notices usually depends.

Where the Articles provide (as in Clause 22 of Table A, 1908) that the right of the Executors or Administrators to be registered as Members in respect of the Shares of the deceased shall be subject to the power conferred on the Directors to refuse to sanction a proposed transfer of Shares, a decision to refuse to register must be arrived at by a resolution of the Board. Accordingly, if a resolution declining to register cannot be passed by the Board by reason of the fact that there is an equality of votes and the Chairman has no casting vote, the Executors or Administrators are entitled to have their names entered in the Register as Members.‡

The transfer of Shares to a legatee or purchaser must be made by the Executors or Administrators in their representative capacity if they have not been registered as Members. When Shares have been specifically bequeathed, the transfer is liable to stamp duty of 10s., and the same duty is payable on a transfer to a residuary legatee, the consideration in such cases being nominal.

* *Bentham Mills Spinning Co.*, [1879] 11 Ch. D. 900.

† *T. H. Saunders & Co.*, [1908] 1 Ch. 415.

‡ *Hackney Pavilion*, 18 76, [1924] L. J. Ch. 193.

When, however, Shares are transferred to a beneficiary in satisfaction or part satisfaction of a pecuniary legacy *ad valorem* duty is payable.

It is usual for Companies to require Executors or Administrators desirous of being registered as Members to execute an agreement (bearing a 6d. stamp) that they will hold the Shares on the same terms and subject to the same conditions as those upon which the deceased held the same, and this course is especially advisable if the Shares are only partly paid up. The acceptance of liability is, however, implied when, in accordance with a "distinct and intelligent" request by the Executors or Administrators, their names have been entered in the Register as the holders of the Shares of the deceased. Without such an Agreement or definite request the Secretary of a Company should not be instructed to enter the names of the Executors or Administrators as being the holders of the Shares.*

In the event of a Member being adjudicated a bankrupt or found a lunatic, the power to transfer the Shares is vested in the trustee or committee. Upon production of the Order of Court under which the appointment was made, the Secretary must enter the names of the trustee or committee in the Register.

Upon the death of one of several persons registered as joint holders, the Shares vest in the survivors; but the Company should require production of evidence of the death before altering the Register.

See also under TRANSFERS OF SHARES.

TRUSTS.

No notice of any trust (expressed, implied, or constructive) may be entered on the Register or received by the Registrar in the case of Companies registered in England or Ireland (Section 27).

* *Buchan's Case*, [1879] 4 App. Ca. 583.

The entry of the Public Trustee by that name in the books of a Company does not constitute notice of a trust (Public Trustee Act, 1906, Section 11).

Articles usually provide that persons entitled to Shares in consequence of the death or bankruptcy of a Member have the right (subject to the Directors' right to decline or suspend registration) either to be registered as Members or to make such a transfer of the Shares as the deceased or bankrupt could have made. When registered as Members the representatives of a former holder have all the rights of membership and become personally liable for Calls. Until such registration the estate of the former holder remains liable, but although dividends must be paid to the representatives if they have proved their title, they are not entitled to vote or receive notices unless the Articles contain such a provision as that made by Clause 114 of Table A, 1908.*

TRUST DEEDS.

Substantial issues of Debentures are usually secured by Trust Deeds vesting the property affected in trustees, and empowering them to take action in the event of the security becoming enforceable. Where Debenture Stock is issued a Trust Deed is essential. Provision is generally made for the convening of meetings of the holders of Debentures or Debenture Stock, power being given to a specified majority to sanction the modification of the terms of the security if thought fit, *e.g.* by extending the time for payment or permitting a reconstruction.

A copy of any Trust Deed securing an issue of Debentures or Debenture Stock must be forwarded to every holder of any such Debentures or Stock at his request on payment in the case of a printed Trust Deed of the sum of 1s. or such less sum as may be prescribed by the

* *Allen v. Gold Reefs of West Africa*, [1900] 1 Ch 656.

Company, or where the Trust Deed has not been printed on payment of 6d. for every 100 words required to be copied [Sections 102 (2) and 285].

A Trust Deed securing Debentures is sufficiently stamped with 10s. if the Debentures of the entire series are duly stamped. Should only a portion of the series be issued in the first instance, the amount of the *ad valorem* duty which would have been payable on the remaining Debentures if issued must be deposited with the Board of Inland Revenue for transfer to those instruments when issued. The adjudication stamp is usually obtained on the Deed in order that it may be evident, without production of the Debentures, that the full duty has been paid. A Trust Deed securing Debenture Stock requires *ad valorem* duty as a Mortgage, but the Stock Certificates do not attract any duty.

See also DEBENTURES and MORTGAGES AND CHARGES.

UNLIMITED COMPANIES.

A Company is usually registered with limited liability as a matter of course, even in cases where registration with unlimited liability would serve the purpose desired equally well. As, however, Capital Duty is not payable on the registration of an Unlimited Company which has a Capital, several large Companies have been registered with unlimited liability during recent years. These have mostly been non-trading concerns or Companies formed to facilitate the management of landed estates; but even in the case of an ordinary trading concern, an Unlimited Company is more attractive than a partnership, as, although the Members are liable *pro rata* for the whole of the Company's debts and liabilities (apart from any liability they may be under as Holders of partly paid Shares), their liability is at an end when they have ceased to be Members for one year, provided the Company has not in the meantime gone into liquidation [Section 123 (1)].

The Memorandum of Association of an Unlimited Company must contain the first three of the Clauses required in the case of a Company Limited by Shares, and must be accompanied by printed Articles of Association. The proposed nominal Capital or number of Members must be stated in the Articles for the purpose of enabling the Registrar to determine the fees payable on registration.

If an Unlimited Company has a Share Capital, although the amount thereof is only required to be stated in the Articles, each Subscriber of the Memorandum must write opposite to his name the number of Shares he agrees to take, one being the minimum (Section 5).

Where an Unlimited Company, has not a Share Capital it is technically a Public Company, and that is also the case where it has a Share Capital, unless the provisions of Section 121, as amended by Section 1 (2) of The Companies Act, 1913, constituting it a Private Company, are incorporated in the Articles or are adopted by Special Resolution (*see* p. 171).

An Unlimited Company may by altering its Articles by Special Resolution increase or reduce its Capital at any time, and the sanction of the Court is not required in either case.

The power of a Company to alter its Articles by Special Resolution in the case of an Unlimited Company formed and registered under The Joint Stock Companies Acts, 1856-7, extends to altering any regulations relating to the amount of its Capital or its division into Shares, although those regulations are contained in the Memorandum of Association (Section 13). It has been held that an Unlimited Company will also have power, if the Articles so direct, to return the whole or any portion of the subscribed Capital to the Members and to permit the termination of membership on any terms which it may prescribe.*

* *Borough Commercial and Building Society*, [1893] 2 Ch. 242.

An Unlimited Company may acquire Limited Liability by re-registration, but any debts or liabilities incurred prior to such re-registration will not be affected (Section 57).

On registration as a Limited Company an Unlimited Company with a Capital divided into Shares may do either or both of the following things: namely, (a) increase its Share Capital by increasing the nominal amount of each of its Shares, but subject to the condition that no part of the increased Capital shall be called up except in the event and for the purposes of a winding up; (b) provide that a specified portion of its uncalled Capital shall not be called up unless the Company is wound up (Section 58).

When an Unlimited Company with a Capital divided into Shares is registered as a Limited Company Capital Duty at the rate of £1 per £100 on the nominal Capital must be paid, together with a registration fee equal to the amount which would be payable on the registration of a Limited Company with the same nominal Capital, and a filing fee of 5s. on certain of the forms required to be filed.

The Registers to be kept and the Returns to be filed are the same as in the case of a Company Limited by Guarantee.

See also MEMORANDUM OF ASSOCIATION.

UNREGISTERED COMPANIES.

Provision is made for the winding up of Unregistered Companies by Part VIII. of the Companies Act. For such purpose the expression "Unregistered Company" includes any Partnership, Association, or Company consisting of more than seven Members, any Trustee Savings Bank certified under The Trustee Savings Banks Act, 1863, and any Limited Partnership*—unless such bodies have

*The provisions relating to the winding up of Limited Partnerships were repealed, as respects England, by Section 24 of The Bankruptcy and Deeds of Arrangement Act, 1913, and Limited Partnerships are now subject to the provisions of The Bankruptcy Act, 1914 (see Section 127 of that Act).

been registered under the Joint Stock Companies Acts or The Companies Act, 1862, or are Railway Companies incorporated by special Act (Section 267).

An Unregistered Company may be wound up by the Court (but not voluntarily or subject to supervision)—

- (a) If it is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;
- (b) If it is unable to pay its debts ;
- (c) If the Court is of opinion that it is just and equitable that it should be wound up.

(Section 268).

Every person is deemed to be a Contributory who is liable to pay or contribute to the payment of any debt or liability of the Company or to the payment of any sum for the adjustment of the rights of the Contributories among themselves, or to the payment of the costs and expenses of winding up (Section 269).

Except for the purpose of being wound up, an Unregistered Company is not deemed to be a Company under The Companies (Consolidation) Act, 1908.

VENDORS.

The name and address of and amount payable to every Vendor of property purchased or acquired by a Company, or proposed to be so purchased or acquired, must be stated in any Prospectus which offers Shares or Debentures for subscription where the proceeds of the issue are to be devoted towards payment for the property [Section 81 (1) (f)]. Where the Vendors or any of them are a firm, the Members of the firm are not deemed to be separate Vendors, and accordingly the amount payable to the individual partners need not be stated [Section 81 (1) (f)]. Every person is deemed to be a Vendor who has entered

into a contract (absolute or conditional) for the sale or purchase, or for the option of purchase, of any property to be acquired by the Company where (a) the purchase money is not fully paid at the date of the issue of the Prospectus; or (b) the purchase money is to be paid or satisfied (wholly or partially) out of the proceeds of the issue offered for subscription; or (c) the contract depends for its validity or fulfilment on the result of that issue [Section 81 (2)]. Where a Company acquires property on lease, the lessor is to be regarded as a Vendor [Section 81 (3)].

If the Company is a sub-purchaser, the names and addresses of the original and all subsequent Vendors must be stated in the Prospectus [Section 81 (1) (f)].

VOTES.

Shareholders have the right to vote at General Meetings in accordance with the Articles. Usually, on a poll, Members are given one vote in respect of each Share held upon which there are no Calls in arrear, but where Table A (1862) applies Members have one vote for every Share up to 10, an additional vote for every 5 Shares beyond the first 10 up to 100, and a further vote for every 10 Shares beyond the first 100 Shares held by them.

A model set of Articles dealing with "Votes of Members" is given in Table A of 1908 (Clauses 60-67). Companies to which that Table applies should also bear in mind the provisions of Clauses 49-59 concerning notices of and procedure at Meetings and the taking of a poll.

Votes should in the first instance be taken on a show of hands, each person having one vote, irrespective of any proxies he may hold*; but a poll may be taken in

* *Ernest v. Loma Gold Mines*, [1897] 1 Ch. 1.

accordance with the Articles on the demand of the requisite number of Shareholders, and in that case the votes are calculated according to the provisions of the Articles.

When an Extraordinary Resolution is submitted to a Meeting to be passed, or a Special Resolution is submitted to be passed or confirmed, the declaration by the Chairman of the result of the voting is conclusive, unless a poll is duly demanded [Section 69 (3)]. Such demand may be made by three persons entitled to vote, unless the Articles prescribe a number, not being more than five [Section 69 (4)].

Articles usually entitle the Chairman to a second or casting vote in the case of an equality of votes, whether on a show of hands or on a poll. Otherwise he has no right to an additional vote.*

Articles also generally permit a Member to vote by proxy; but he does not possess the right unless it is expressly conferred.†

Shareholders are at liberty to vote at Meetings in accordance with their own individual interests, and also (subject to the Articles) to transfer Shares in order to increase their voting power.‡

In default of any regulations as to voting every Member has one vote (Section 67).

Although Directors are usually prohibited by the Articles from voting at Board Meetings in respect of contracts in which they are interested, they are nevertheless entitled to vote as Shareholders at a General Meeting held to confirm any such contract.§

* *Nell v. Longbottom*, [1894] 1 Q. B. 767.

† *Harben v. Phillips*, [1883] 23 Ch. D. 14.

‡ *Pender v. Lushington*, [1877] 6 Ch. D. 70.

§ *North-West² Transportation Co. v. Beatty*, [1887] 12 App. Ca. 589.

Where a Company has more than one class of Shares the respective rights of voting at Meetings conferred by the several classes must be stated in any Prospectus issued by the Company (Section 81).

Articles sometimes provide that where a person has acquired Shares by transfer he shall not be entitled to vote in respect of such Shares until he has been possessed of them for a specified time, three months being the usual period. An impediment is thus placed in the way of Members who desire to increase their voting power by transferring Shares to nominees.

It is sometimes desired to preclude the holders of certain Shares or classes of Shares from voting in respect thereof, and this object may validly be achieved by including appropriate restrictions in the Memorandum or Articles of Association. If, however, there are no such restrictions prior to the issue of the Shares, the right of voting, once acquired, cannot be subsequently withdrawn unless specific authority therefor is found in the Memorandum or Articles. To ascertain whether the voting rights of the holders of certain Shares can be varied it is necessary, in addition to referring to the Memorandum and Articles, to consider any terms of issue affecting the rights.*

Directors must not allot Shares to themselves or their friends with a view to securing a controlling vote†; but they may increase their holding of Shares by purchases from other Members,‡ and thus effect the same purpose.

^{4051.}Persons in arrear in the payment of Calls or instalments at fixed dates are usually prohibited from voting by the Articles. *

* *Barrow Haematite Steel Co.*, [1888] 39 Ch. D. 582.

† *Punt v. Symons & Co.*, [1903] 2 Ch. 506; *Piercy v. S. Mills & Co.*, [1920] 1 Ch. 77.

‡ *North-West Transportation Co. v. Beatty*, [1887] 12 A. C. 589.

Where a Company is being wound up by the Court or under its supervision, and Meetings are called by direction of the Court to ascertain the wishes of Creditors or Contributories, regard must be had to the value of each Creditor's debt and to the number of votes conferred on each Contributory by the Articles (Sections 145, 201, and 219).

See also CHAIRMAN, JOINT HOLDERS, *and* PROXIES.

WINDING UP.

Companies may be wound up either—

- (1) By the Court (*see* p. 257) ;
- (2) Subject to the supervision of the Court (*see* p. 258) ;
- (3) Voluntarily (*see* p. 258) ;

(Section 122).

A floating charge on the property of a Company created within three months of the commencement of the winding up is invalid, except to the amount of any cash paid to the Company at the time of or subsequently to the creation of and in consideration for the charge, with interest on that amount at the rate of five per centum per annum, unless it be proved that the Company was solvent immediately after the creation of the charge (Section 212).

If a Creditor or Contributory considers his rights will be prejudiced by a voluntary winding up he may apply for an Order for a compulsory winding up, even though the Company may already be in voluntary liquidation. In such a case the Court may adopt all or any of the proceedings in the voluntary winding up (Sections 197 and 198).

Where a Company, registered in England or Ireland, is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the Company after the commencement of the winding up is void (Section 211).

In the winding up of an insolvent Company registered in England or Ireland, the Rules in force under the Laws of Bankruptcy in those countries must be observed with regard to the respective rights of secured and unsecured Creditors and to debts provable and to the valuation of annuities and future and contingent liabilities (Section 207). In the case of Companies registered in Scotland the Rules provided by The Bankruptcy (Scotland) Act, 1856, or any other Rules which may be in force for the time being, apply (Section 208).

Where the assets are sufficient to enable all the debts and liabilities and the costs of the liquidation to be paid in full, debts of every description are admissible to proof against the Company, a just estimate being made so far as possible of the value of any debts or claims which do not bear a certain value (Section 206).

A Company may prove, in the event of the bankruptcy of a Member, for the estimated value of his liability to future Calls as well as Calls already made [Section 127 (2)].

If a Bank of Issue be wound up and the general assets are insufficient to satisfy the claims of the general Creditors and the Noteholders, the Members—after satisfying the remaining demands of the Noteholders—are liable to contribute towards payment of the debts of the general Creditors a sum equal to the amount received by the Noteholders out of the general assets (Section 251).

In cases of misapplication of money or property of a Company, or of misfeasance or breach of trust, the Court has power in the course of the winding up to assess damages against the delinquent Directors or other Officers (Section 215).

The Judges of the County Courts who sit at places more than twenty miles from the General Post Office, the Judge exercising the Bankruptcy jurisdiction of the High Court in Ireland, the Assistant Barristers and

Recorders in Ireland, and the Sheriffs of Counties in Scotland are Commissioners for the purpose of taking evidence under the Act where a Company is wound up in any part of the United Kingdom. The Court may refer to any such person the whole or any part of the examination. Every Commissioner so appointed—in addition to any powers he already possesses—has in the particular matter referred to him the same power of summoning and examining witnesses, requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses as the Court which made the Winding-up Order (Section 226).

The Court may stay the proceedings in the winding up, either altogether or for a limited time, on proof being furnished that such proceedings ought to be stayed (Sections 144 and 193).

WINDING UP BY THE COURT.

A Company may be wound up by the Court—

- (1) If the Company has by Special Resolution resolved that the Company be wound up by the Court;
- (2) If default is made in filing the Statutory Report or in holding the Statutory Meeting;
- (3) If the Company does not commence business within a year from its Incorporation, or suspends business for a whole year;
- (4) If the number of Members is reduced, in the case of a Private Company below two, or in the case of any other Company below seven;
- (5) If the Company is unable to pay its debts;
- (6) If the Court is of opinion that it is just and equitable that the Company should be wound up.

(Section 129).

For detailed information on the subject of a Compulsory Winding Up the reader is referred to GORE-BROWNE'S "Handbook on the Formation, Management, and Winding Up of Joint Stock Companies."

WINDING UP SUBJECT TO SUPERVISION OF THE COURT.

When a Company has by Special or Extraordinary Resolution resolved to wind up voluntarily the Court may make an Order that the voluntary winding up shall continue, but subject to such supervision of the Court and with such liberty for Creditors, Contributories, and others to apply to the Court, and generally on such terms and conditions as the Court thinks just (Section 199).

This subject also being outside the scope of this book, the reader is again referred to Sir FRANCIS GORE-BROWNE'S "Handbook" for detailed information.

WINDING UP VOLUNTARILY.

A Company may be wound up voluntarily—

- (1) When the period (if any) fixed for the duration of the Company by the Articles expires, or the event (if any) occurs on the occurrence of which the Articles provide that the Company is to be dissolved, and the Company in General Meeting has passed a Resolution requiring the Company to be wound up voluntarily ;
- (2) If the Company resolves by Special Resolution that the Company be wound up voluntarily ;
- (3) If the Company resolves by Extraordinary Resolution that it cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up.

(Section 182).

A voluntary winding up is deemed to commence at the time of the passing of the Resolution authorising the winding up (Section 183). For this purpose a Special Resolution is deemed to be passed at the date of confirmation.

The Resolution to wind up will be invalid if it is passed in some form other than that of which notice has

been given,* or if there is no quorum at the Meeting.† As a rule, the Resolution will be invalid also if the Meeting has not been properly convened,‡ although a few years ago the Divisional Court upheld a Resolution for voluntary winding up which had been passed at a Meeting of which no notice had been given but at which all the Members were present, and signed a Minute of what purported to be an Extraordinary Resolution.§

The majority of Companies are wound up by Special Resolution, although in a case of insolvency an Extraordinary Resolution, stating that the Company cannot, by reason of its liabilities, continue its business, is almost invariably passed. The Resolution, whether Special or Extraordinary, must be printed and registered, and also inserted in the London, Edinburgh, Belfast, or Dublin *Gazette*, according to whether the Company was registered in England or Scotland or Northern Ireland or the Irish Free State (Sections 70, 185, and 285).

The copy of the Resolution lodged at the *Gazette* Office, in addition to being signed by an officer of the Company (usually the Chairman) must be authenticated by the signature of a Solicitor.

Immediately on going into liquidation the Company must cease to carry on its business except so far as may be required for the beneficial winding up thereof (Section 184), and the following are the principal consequences which ensue:—

- (1) The assets of the Company have to be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, unless the Articles otherwise provide, must be distributed among the Members according to their rights and interests.

* *Re* Bridport Old Brewery Co., [1867] 2 Ch. 191.

† *Re* Cambrian Peat, Fuel, and Charcoal Co., [1874] 31 L. T. 773.

‡ *Re* State of Wyoming Syndicate, [1901] 2 Ch. 431.

§ *Oxley Motor Co.*, [1921] 3 K. B. 92.

- (2) The Company must in General Meeting appoint one or more Liquidators for the purpose of winding up the affairs and distributing the assets of the Company, and may fix their remuneration.
- (3) All the powers of the Directors cease except so far as the Company in General Meeting or the Liquidator may sanction the continuance thereof.

(Section 186).

Accordingly no transfer of Shares may be made without the permission of the Liquidator, and no alteration in the status of the Members can be effected (Section 205).

No distribution of assets may be made to the Members before the commencement of the liquidation, as the Capital would be thereby illegally reduced.

The order of preference in which the claims of Creditors are dealt with by the Liquidator is referred to under "LIQUIDATOR."

As soon as the affairs of the Company are fully wound up the Liquidator must prepare an account showing how the winding up has been conducted and the property disposed of, and thereupon call the Final Meeting for the purpose of laying the account before the Members and giving any explanation thereof. Within one week after the Meeting a return thereof must be filed with the Registrar, and on the expiration of three months from the date of filing the Company will be deemed to be dissolved. The Court may, however, on the application of the Liquidator or any other person who appears to the Court to be interested, make an Order deferring the date at which the dissolution is to take effect for such time as may seem fit (Section 195). Where dissolution has already been effected, the Court may at any time within two years thereafter, on application by the Liquidator or any other person who appears to be interested, make an Order declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if there

had been no dissolution (Section 223). The person on whose application any such Order is made must file with the Registrar an office copy thereof within seven days, the penalty for default being £5 a day (Section 195).

Occasionally it is found impossible to get a quorum of Members to attend the Final Meeting, so that the requisite Return cannot be filed. Such cases receive special consideration by the Registrar, who will, if the circumstances appear to him to justify such a course, dissolve the Companies in the manner provided by Section 242 of the Consolidation Act (*see* DEFUNCT COMPANIES). In every instance the Liquidator must furnish accounts in the prescribed form showing the realisation and disposal of all the assets, and also make a special affidavit as to the Company's position.

Before dissolution an Extraordinary Resolution should be passed by the Company directing the Liquidator how to dispose of the books and papers of the Company and of the Liquidator, and such Resolution must be printed and registered. After five years from the dissolution no responsibility rests on anyone to whom the custody of the books and papers was committed by reason of the same not being forthcoming to any person claiming to be interested therein (Sections 70 and 222).

All costs, charges, and expenses properly incurred in the winding up, including the Liquidator's remuneration, are payable out of the assets in priority to all other claims (Section 196).

Care should be taken to ensure that all legal formalities are observed in regard to the disposal of the assets before the conclusion of the winding up, as the Liquidator cannot act on behalf of the Company after dissolution. Any personal property not disposed of before dissolution belongs to the Crown as *bona vacantia*.

YEAR.

The word "year," wherever mentioned in the Companies Acts, means a calendar year.*

A General Meeting must be held once at least in each year. The Annual Return required must be filed within twenty-one days after the first or only Ordinary General Meeting in the year (*see* ANNUAL RETURN).

* *Gibson v. Barton*, [1875] L. R. 10 Q. B. 329.

APPENDIX.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

[8 EDWARD VII., CHAPTER 69.]

An Act to Consolidate The Companies Act, 1862, and the Acts Amending it.

[21st December, 1908.]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

CONSTITUTION AND INCORPORATION.

Prohibition of Large Partnerships.

1.—(1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

(2) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

Memorandum of Association.

2. Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing

their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- (i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- (iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

3. In the case of a company limited by shares—

(1) The memorandum must state—

- (i) The name of the company, with “Limited” as the last word in its name;
 - (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
 - (iii) The objects of the company;
 - (iv) That the liability of the members is limited;
 - (v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;
- (2) No subscriber of the memorandum may take less than one share:
- (3) Each subscriber must write opposite to his name the number of shares he takes.

4. In the case of a company limited by guarantee—

(1) The memorandum must state—

- (i) The name of the company, with “Limited” as the last word in its name;
- (ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;
- (iii) The objects of the company;
- (iv) That the liability of the members is limited;
- (v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of

winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) If the company has a share capital—

(i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) No subscriber of the memorandum may take less than one share;

(iii) Each subscriber must write opposite to his name the number of shares he takes.

5. In the case of an unlimited company—

(1) The memorandum must state—

(i) The name of the company;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company.

(2) If the company has a share capital—

(i) No subscriber of the memorandum may take less than one share;

(ii) Each subscriber must write opposite to his name the number of shares he takes.

6. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

7. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

8.—(1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it, as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

9.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently ; or
- (b) to attain its main purpose by new or improved means ; or
- (c) to enlarge or change the local area of its operations ; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and
- (b) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court :

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company

to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

Articles of Association.

10.—(1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act.

(3) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

11. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

12. Articles must—

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed; and
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

13.—(1) Subject to the provisions of this Act* and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

General Provisions.

14.—(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a specialty debt.

15. The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

16.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

17.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such declaration as sufficient evidence of compliance.

* And to The Companies (Foreign Interests) Act, 1917, as to which see pp. 18 and 412-413.

18.—(1) Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

Associations Not for Profit.

19. A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land; but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

20.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is so revoked the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Companies Limited by Guarantee.

21.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the

memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of January, nineteen hundred and one, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

22.—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

23. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock.

24.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

25.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) The date at which each person was entered in the register as a member;

(iii) The date at which any person ceased to be a member.

(2) If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the

default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

26.—(1) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the Company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

- (a) The amount of the share capital of the company, and the number of the shares into which it is divided;
- (b) The number of shares taken from the commencement of the company up to the date of the return;
- (c) The amount called up on each share;
- (d) The total amount of calls received;
- (e) The total amount of calls unpaid;
- (f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;
- (g) The total number of shares forfeited;
- (h) The total amount of shares or stock for which share warrants are outstanding at the date of the return;
- (i) The total amount of share warrants issued and surrendered respectively since the date of the last return;
- (k) The number of shares or amount of stock comprised in each share warrant;
- (l) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called;* and
- (m) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

* The requirements of the Section in this respect have been extended by The Companies (Particulars as to Directors) Act, 1917, as to which see pages 13 and 114.

(3) The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

27. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England or Ireland.

28. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

29. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

30.—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day

during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

31. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

32.—(1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

33. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

34.—(1) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonial register).

(2) The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) For the purpose of the provisions of this Act relating to colonial registers the term "colony" includes British India and the Commonwealth of Australia.

35.—(1) A colonial register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the High Court, and that the offences of refusing inspection or copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

(3) The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

36. In relation to stamp duties the following provisions shall have effect :—

(a) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from British stamp duty.

(b) On the death of a member registered in a colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far

as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

37.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

(i) The fact of the issue of the warrant;

(ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

38.—(1) If any person—

- * (i) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document

* This paragraph has been repealed, as respects England and Ireland, by Section 20 of The Forgery Act, 1913, and accordingly now applies to Scotland only.

purporting to be a share warrant or coupon, issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or

- (ii) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

* (2) If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon, so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

39. A company, if so authorised by its articles, may do any one or more of the following things; namely,—

- (1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:
- (2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up:
- (3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

40.—(1) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it

* This Sub-section has been repealed, as respects England and Ireland, by Section 20 of The Forgery Act, 1913, and accordingly now applies to Scotland only.

may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

41.—(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
 - (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
- (2) The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.
- (3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(4) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

42. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the registrar of companies of the consolidation, division, conversion, or reversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

43. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

44.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of

members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

45.—(1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

46.—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

- (a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

47. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or

the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

49.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount ; (that is to say,)—

- (i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

50.—(1) The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

51.—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the

share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

53. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect, with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

- (i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and
- (ii) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

54. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

55. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

56. A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

57.—(1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company, may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

58. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

- (a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up ;

- (b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up, except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

59. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

60.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

61.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

(2) Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

PART III.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

62.—(1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business.

63.—(1) Every limited company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible :

(b) shall have its name engraven in legible characters on its seal :

(c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Meetings and Proceedings.

64.—(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

65.—(1) Every company limited by shares and registered on or after the first day of January nineteen hundred and one shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar of companies forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

66.—(1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

67. In default of, and subject to, any regulations in the articles—

- (i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule to this Act:
- (ii) Five members may call a meeting:
- (iii) Any person elected by the members present at a meeting may be chairman thereof:
- (iv) Every member shall have one vote.

68. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

69.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been—

- (a) passed in manner required for the passing of an extraordinary resolution; and
- (b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when notice is given and the meeting held in manner provided by the articles.

70.—(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

71.—(1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

Appointment, Qualification, &c., of Directors.

72.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

- (i) Signed and filed with the registrar of companies a consent in writing to act as such director ; and
- (ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

73.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification ; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

74. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

75.—(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.*

(2) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contracts, &c.

76.—(1) Contracts on behalf of a company may be made as follows (that is to say):—

- (i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged;
- (ii) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;
- (iii) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

(3) Any deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding whether attested by witnesses or not.

77. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company, if made, accepted, or endorsed in the name of, or by, or on behalf, or on account of the company by any person acting under its authority.

78. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as

* The requirements of this Section have been extended by The Companies (Particulars as to Directors) Act, 1917, as to which see pages 198 and 414.

its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

79.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Prospectus.

80.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar of companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

81:—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

- (a) the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and
- (b) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
- (c) the names, descriptions, and addresses of the directors or proposed directors; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and
- (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
- (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

- (i) the amount or estimated amount of preliminary expenses ; and
 - (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and
 - (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus ; and
 - (l) the names and addresses of the auditors (if any) of the company ; and
 - (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company ; and
 - (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.
- *(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—
- (a) the purchase money is not fully paid at the date of issue of the prospectus ; or
 - (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or
 - (c) the contract depends for its validity or fulfilment on the result of that issue.
- (3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.
- (4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

- (a) as regards any matter not disclosed, he was not cognisant thereof ; or
- (b) the non-compliance arose from an honest mistake of fact on his part ;

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

82.—(1) A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July, nineteen hundred and eight.

83. A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

84.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (a) With respect to every untrue statement not purporting to be made, on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures as the case may be, believe, that the statement was true; and
- (b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the reports or valuation. Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
- (c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document :

or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason thereof.
- (2) Where a company existing on the eighteenth day of August one thousand eight hundred and ninety, has issued shares or debentures,

and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company :

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Allotment.

85.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely :—

- (a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription, upon which the directors may proceed to allotment ; or
- (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription;

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say) :—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

This subsection shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

86.—(1) An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby : Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

87.—(1) A company shall not commence any business or exercise any borrowing powers unless—

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash ; and
- (c) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with ; and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2) The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

88.—(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar of companies—

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

Commissions and Discounts.

89.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

- (a) In the case of shares offered to the public for subscription, disclosed in the prospectus ; or

- (b) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

90. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

91. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

- (1) No such payment shall be made unless the same is authorised by the articles or by special resolution:
- (2) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade:

- (3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry :
- (4) The payment shall be made only for such period as may be determined by the Board of Trade ; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided :
- (5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council :
- (6) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid :
- (7) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate :
- (8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment applies.

Certificates of Shares, &c.

92.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to Mortgages, Charges, &c.

93.—(1) Every mortgage, or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures ; or
- (b) a mortgage or charge on uncalled share capital of the company ; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; or

- (d) a mortgage or charge on any land, wherever situate, or any interest therein ; or
- (e) a mortgage or charge on any book debts of the company ; or
- (f) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable :

Provided that—

- (i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar ; and
 - (ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and
 - (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts ; and
 - (iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.
- (2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such

mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(a) the total amount secured by the whole series; and

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any

mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

94.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

95.—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

96. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular, with respect to any such mortgage or charge, was accidental, or due to inadvertence

or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

97. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

98. The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

99.—(1) If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

100.—(1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

Debentures and Floating Charges.

103. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

104.—(1) Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures, or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the Company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

- (a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or
- (b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

105. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

106. Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

107.—(1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.*

(2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Statement to be published by Banking and certain other Companies.

108.—(1) Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C in the First Schedule to this Act, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

* As to the inclusion among debts having priority under this section of any amount due in respect of compensation under The Workmen's Compensation Act, 1906, see Section 19 of The Workmen's Compensation Act, 1923.

(6) This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872, as to the annual statements to be made by such a company, apply with or without modifications, if the company complies with those provisions.*

Inspection and Audit.

• **109.**—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

- (i) In the case of a banking company having a share capital, on the application of members holding not less than one third of the shares issued :
- (ii) In the case of any other company having a share capital, on the application of members holding not less than one tenth of the shares issued :
- (iii) In the case of a company not having a share capital, on the application of not less than one fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation ; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

• (4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly. •

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

(7) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorised to do.

110.—(1) A company may by special resolution appoint inspectors to investigate its affairs.

* The Life Assurance Companies Acts, 1870 to 1872, were repealed by The Assurance Companies Act, 1909. The Sub-section should be construed as referring to the latter Act instead of the repealed Acts.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

111. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

112.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting :

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

113.—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required ; and
- (b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company, or if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-nine—

- (a) if the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom ; and
- (b) the balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

114.*—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and eight.

Carrying on Business with less than the legal Minimum of Members.

115. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in the action of any other member.

Service and Authentication of Documents.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

Tables and Forms.

118.—(1) The forms in the Third Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.

(3) Any such table or form, when altered, shall be published in the *London Gazette*, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A in the said First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

Arbitrations.

119.—(1) A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the *Railway Companies Arbitration Act, 1859*, any existing or future difference between itself and any other company or person.

* See also Section 113 (3).

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) All the provisions of the Railway Companies Arbitration Act, 1859, shall apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of those provisions "the companies" shall include companies under this Act.

Power to compromise.

120.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

Meaning of "Private Company."

121.*—(1) For the purposes of this Act the expression "private company" means a company which by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.*

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

* See also The Companies Act, 1913 (p. 410).

PART IV.

WINDING UP.

Preliminary.

122.—(1) The winding up of a company may be either—

- (i) by the court; or
- (ii) voluntary; or
- (iii) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

123.—(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say) :—

- (i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up :
- (ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member :
- (iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :
- (iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :
- (v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up :
- (vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :
- (vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any

other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company : Provided that—

- (i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up :
- (ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office :
- (iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

124. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

125. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

126.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

127. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

- (1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company ; and
- (2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

128.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Winding up by Court.

129. A company may be wound up by the court—

- (i) if the company has by special resolution resolved that the company be wound up by the court :
- (ii) if default is made in filing the statutory report or in holding the statutory meeting :
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year :
- (iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven :
- (v) if the company is unable to pay its debts :
- (vi) if the court is of opinion that it is just and equitable that the company should be wound up.

130. A company shall be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

- (ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (iii) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or
- (iv) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

181.—(1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all

the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

132. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court:

133.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

134. The court having jurisdiction to wind up companies registered in Ireland shall be the High Court:

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

135. The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

136. Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court :

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

137.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately : Provided that

- (a) A contributory shall not be entitled to present a petition for winding up a company unless—
 - (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ; and
- (b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ; and
- (c) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

139. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

140. At any time after the presentation of a petition for winding up and before a winding-up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein ; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

141.—(1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

142. When a winding-up order has been made, no action or proceedings shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

143. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

144. The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

145. The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Receiver.

146.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term “official receiver” shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

147.—(1) Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

148.—(1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.

149.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

- (a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed;
- (b) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (c) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(9) A liquidator shall be described as follows (that is to say):—

(a) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(b) in a winding up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

150.—(1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

151.—(1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof:

(c) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the

sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction :

- (d) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.
- (2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—
 - (a) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels :
 - (b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal :
 - (c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors :
 - (d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business :
 - (e) To raise on the security of the assets of the company any money requisite :
 - (f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :
 - (g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
- (4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding-up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

152.—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(a) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver ; and

(b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

153. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

154.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid :

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per

cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

155.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

156. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court personally or by his agent, inspect any such books.

157.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested,

make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

158.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

•(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up. •

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

159.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any

inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

160.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

161.—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other

than himself, apply to the court to, and the court may on such application appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

• (3) The special manager shall receive such remuneration as may be fixed by the court.

162. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

Ordinary Powers of Court.

163.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

164. The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

165.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

166.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

167.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

168.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

169. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

170. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

171. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

172.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

173. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) settling list of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved;

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

174.—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

175.—(1) When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud

has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor; or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

176. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that

a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

177. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Orders.

178.—(1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

179. Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

180.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced

in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

181.—(1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that—

- (i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and
- (ii) Every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Voluntary Winding Up.

182. A company may be wound up voluntarily— •

- (1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :
- (2) If the company resolves by special resolution that the company be wound up voluntarily :
- (3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

183. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

184. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

185. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the *Gazette*.

186. The following consequences shall ensue on the voluntary winding up of a company :—

- (i) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company :
- (ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them :
- (iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :
- (iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court :
- (v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves :

- (vi) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories :
- (vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator :
- (ix) The court may, on cause shown, remove a liquidator and appoint another liquidator.

187.—(1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

***188.**—(1) Every liquidator appointed by a company in a voluntary winding up, shall within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or, such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

* See also Companies (Winding-Up) Rules set out on p. 423 *et seq.*

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

189.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

180.—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

191.—(1) Any arrangement entered into between a company about to be, or in the course of being wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

192.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may

enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidators in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

193.—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

194.—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the

purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

195.—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette*, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

196. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

198. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding Up subject to Supervision of Court.

199. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

200. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

201. The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

202.—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

203.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (ro), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all

purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

204. Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

Supplemental Provisions.

205.—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

206. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

207. In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

208. In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditors of the company, voting in matters relating to the

winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

209.—(1) In a winding up there shall be paid in priority to all other debts—

- (a) All parochial or other local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;
- (b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and
- (c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and
- (d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (*not exceeding in any individual case one hundred pounds*)† due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act.

(2) The foregoing debts shall—

- (a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

* By Section 110 of The National Insurance Act, 1911, all contributions payable by the Company under that Act in respect of employed contributors or workmen in an insured trade during the four months before the date of commencement of the winding up are also payable in priority to all other debts

† The words in *italic* are repealed, and the operation of the Sub-section is extended by Sections 19, 31, and Schedule of The Workmen's Compensation Act, 1923.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date hereinbefore in this section referred to is—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding up.

210.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

212. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

213. In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect :—

- (1) The winding up shall, in the case of a winding up by the court, as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of

the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and those funds or effects, or the proceeds of those effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or pointer before the date of the winding up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense *bonâ fide* incurred by him in such diligence:

- (2) The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground hereinafter provided:
- (3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland:
- (4) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

214.—(1) The liquidator may, with the sanction following (that is to say)—

- (a) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;

- (b) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and
- (c) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company;

do the following things or any of them :—

- (i) Pay any classes of creditors in full;
- (ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

215.—(1) Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section four of the Bankruptcy Act, 1883.

(4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

216. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

217.—(1) If it appears to the court in the course of, a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

218. *If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.**

219.—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

220. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

* Repealed by Section 17 of The Perjury Act, 1911.

221. After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

222.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say) :—

- (a) In the case of a winding up by or subject to the supervision of the court in such way as the court directs;
- (b) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

223.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

224.—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

225. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

226.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

227.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

228.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

229.—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all

moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

230.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

231.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

232. The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

233.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

(3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

234.—(1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of companies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

235. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

236.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates, without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fees.

237.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as it relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act.

238.—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

- (a) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England;
- (b) As regards the Court of Session, by act of sederunt;
- (c) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland;
- (d) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

Special Provisions as to Stannaries.

• **239.** When several companies are in course of liquidation by or under the superintendence of the Court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

240. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

- (1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:
- (2) All wages in relation to the mine of a miner, artisan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:
- (3) Wages of any miner, artisan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts *(not exceeding in any individual case one hundred pounds)** due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability whereof accrued before the commencement of the winding up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding-up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have

* The words in italic are repealed by Sections 19, 31, and Schedule of The Workmen's Compensation Act, 1923.

been properly incurred, and to all claims by mortgagees, clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all execution creditors, or any other persons, except the claims of the payment of a sum sufficient to discharge the said wages claims and to all existing mortgages or charges thereon, with and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

241.—(1) On the winding up of a company within the stannaries, contributions of the miners, artisans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the pursuer or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

Removal of Defunct Companies from Register.

242.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the *Gazette* and send to the company a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART V.

REGISTRATION OFFICE AND FEES.

243.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

(7) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(8) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorise in Scotland or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

244.—(1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

PART VI.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED
UNDER FORMER COMPANIES ACTS.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

246. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

247. This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879.

248. A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

249.—(1) With the exceptions, and subject to the provisions mentioned and contained in this section,—

- (i) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

- (ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

(2) Provided as follows:—

- (a) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section:
- (b) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:
- (c) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares:
- (d) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:
- (e) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:
- (f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(4) A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

250. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

251.—(1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

252. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say):—

- (1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
- (2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and
- (3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—
 - (a) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(b) The number of shares taken and the amount paid on each share;

(c) The name of the company, with the addition of the word "limited" as the last word thereof; and

(d) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

253. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

- (1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
- (2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnership, cost book regulations, or other instrument constituting or regulating the company; and
- (3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

254. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

255. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

256.—(1) Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

257. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if, it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

258. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

259. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the First Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

260. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

261. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

262. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

263. When a company is registered in pursuance of this Part of this Act—

- (i) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(ii) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say) :—

(a) The regulations in Table A in the First Schedule to this Act shall not apply unless adopted by special resolution;

(b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;

(f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply :

(iii) The provisions of this Act with respect to—

(a) the registration of an unlimited company as limited;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company :

- (iv) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act :
- (v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

264.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications :—

- (a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles ; and
- (b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
- (4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered

in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

266. Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART VIII.

WINDING UP OF UNREGISTERED COMPANIES.

267. For the purposes of this Part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, and any limited partnership.*

268.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

- (i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:
- (ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:
- (iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—
 - (a) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

* The provisions relating to the winding up of Limited Partnerships are repealed, as respects England, by Section 24 of The Bankruptcy and Deeds of Arrangement Act, 1913.

- (b) If the company is unable to pay its debts;
- (c) If the court is of opinion that it is just and equitable that the company should be wound up:
- (iv) An unregistered company shall, for the purposes of this Act be deemed to be unable to pay its debts:—
 - (a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
 - (b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;
 - (c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
 - (d) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
 - (e) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:
- (v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was

authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867 :

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court :

(vi) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company :

(vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.*

(2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

269.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid :

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and

* Repealed, as respects England, by Section 24 (2) of The Bankruptcy and Deeds of Arrangement Act, 1913.

devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

271. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

272. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

273. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM.

274.—(1) Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall within one month from the establishment of the place of business file with the registrar of companies—

- (a) a certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting

or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

- (b) a list of the directors of the company;*
- (c) the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies, and which uses the word "Limited" as part of its name, shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and
- (c) have the name of the company* and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

(6) For the purposes of this section—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "place of business" includes a share transfer or share registration office;

The expression "director"* includes any person occupying the position of director, by whatever name called; and

* See also *The Companies (Particulars as to Directors) Act, 1917*, set out on pages 414-415

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

275. A company incorporated in a British possession which has filed with the registrar of companies the documents and particulars specified in paragraphs (a), (b), and (c) of subsection (1) of the last foregoing section shall have the same power to hold land in the United Kingdom as if it were a company incorporated under this Act.

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

276.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

(2) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to—

- (a) the appointment of directors;
- (b) the restrictions on commencement of business by a company;
- (c) returns as to allotments;
- (d) false statements in respect of which a penalty is provided by this Part of this Act;
- (e) the filing of copies of a prospectus, an order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company;
- (f) the filing of notice of appointment of a liquidator or of the accounts of a receiver or manager;
- (g) general meetings;
- (h) companies established outside the United Kingdom;
- (i) the issue of debentures and certificates of shares and debenture stock;
- (j) the issue, circulation, and publication of balance sheets;
- (k) unqualified persons acting as directors;
- (l) the inspection of registers of debenture holders and the furnishing of copies of trust deeds;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

277. The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

278. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

280.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

281. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable *on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid.**

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

282. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

Report by Board of Trade.

283. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

Authentication of Documents issued by Board of Trade.

284. Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Interpretation &c.

285. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say) :—

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act or an existing company;

"Articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A in the First Schedule to this Act;

* The words in italics were repealed by Section 17 of The Perjury Act, 1911.

- "Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;
- "Document" includes summons, notice, order, and other legal process, and registers;
- "Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;
- "Debenture" includes debenture stock;
- "Books and papers" and "books or papers" include accounts, deeds, writings, and documents;
- "The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;
- "The court" used in relation to a company means the court having jurisdiction to wind up the company;
- "Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;
- "The *Gazette*" means, as respects companies registered in England, the *London Gazette*; as respects companies registered in Scotland, the *Edinburgh Gazette*; and, as respects companies registered in Ireland, the *Dublin Gazette*;
- "Real and personal," as respects Scotland, means heritable and moveable;
- "General rules" means general rules made under this Act, and includes forms;
- "Prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade;
- "Company within the stannaries" means a company engaged in or formed for working mines within the stannaries;
- "The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect to those proceedings is for the time being vested;

“Director” includes any person occupying the position of director by whatever name called;

“Prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

286.—(1) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part :

Provided that the repeal shall not affect—

- (a) The incorporation of any company registered under any enactment hereby repealed; nor
- (b) Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor
- (c) Table A in the First Schedule annexed to the Companies Act, 1862; or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act; nor
- (d) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

(2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

287. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

288. Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

289.—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.

(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

290. Until revoked and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

295. This Act may be cited as the Companies (Consolidation) Act, 1908.

296. This Act shall come into operation on the first day of April nineteen hundred and nine.

SCHEDULES.

FIRST SCHEDULE

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES
(Sections 10, 11, 67, 263, 285).*Preliminary.*

1. In these regulations, unless the context otherwise requires, expressions defined in The Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section eighty-seven of The Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding on the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No shares shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of The Companies (Consolidation) Act, 1908, as may be applicable thereto.

376 *The Companies (Consolidation) Act, 1908.*

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loan upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per

annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:—

I, A. B., of _____, in consideration of the sum of £ _____ paid to me by C. D., of _____ (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called "the _____ Company, Limited," to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid.

As witness our hands the _____ day of _____, 19 ____.

Witness to the signatures of &c.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) A fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(b) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share, or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a

date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that the declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arise.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share Warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

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36. A share warrant shall entitle the bearer to shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

The company may, by special resolution—

- (a) Consolidate and divide its share capital into shares of larger amount than its existing shares :
- (b) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section forty-one of The Companies (Consolidation) Act, 1908 :
- (c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person :
- (d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of The Companies (Consolidation) Act, 1908.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section sixty-six of The Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company, may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meetings.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at any extraordinary meeting, and all that is transacted at an ordinary meeting, with the

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exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power of authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

Company, Limited.

I, _____, of _____, in the county of _____, being a
 member of the _____ Company, Limited, hereby appoint
 _____, of _____, as my proxy to vote for me and on
 my behalf at the ordinary [or extraordinary, as the case may be]
 general meeting of the company to be held on the _____ day
 of _____, and at any adjournment thereof.

Signed this _____ day of _____

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

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70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of The Companies (Consolidation) Act, 1908.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of Directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the registrar of companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

And every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

77. The office of director shall be vacated if the director—

- (a) ceases to be a director by virtue of section seventy-three of The Companies (Consolidation) Act, 1908; or
- (b) holds any other office of profit under the company except that of managing director or manager; or
- (c) becomes bankrupt; or
- (d) is found lunatic or becomes of unsound mind; or
- (e) is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director; but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

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85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES
(Sections 244 and 259).

I.—By a Company Having a Share Capital.		£ s. d.
For registration of a company whose nominal share capital does not exceed £2000	- - - - -	2 0 0
For registration of a company whose nominal share capital exceeds £2000, the following fees, regulated according to the amount of nominal share capital (that is to say)—		£ s. d.
For every £1000 of nominal share capital, or part of £1000, up to £5000	- - - - -	1 0 0
For every £1000 of nominal share capital, or part of £1000, after the first £5000 up to £100,000	- - - - -	0 5 0
For every £1000 of nominal share capital, or part of £1000, after the first £100,000	- - - - -	0 1 0
For registration of any increase of share capital made after the first registration of the company the same fees per £1000, or part of a £1000, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration :		
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.		
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.		
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up, in England	- - - - -	0 5 0
For making a record of any fact by this Act required or authorised to be recorded by the registrar	- - - - -	0 5 0

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II.—*By a Company Not Having a Share Capital.**

For registration of a company whose number of members, as stated in the articles, does not exceed 20 - - - - - 2 0 0

For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100 - - 5 0 0

For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of £5, with an additional 5s. for every 50 members or less number than 50 members after the first 100.

For registration of a company in which the number of members is stated in the articles to be unlimited - - - - - 20 0 0

For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase - - 0 5 0

Provided that no company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England - - - - - 0 5 0

For making a record of any fact by this Act required or authorised to be recorded by the registrar - - - - - 0 5 0

FORM C.

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE
COMPANIES, AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES
(Section 108).

The share capital of the company is , divided into
shares of , each.

The number of shares issued is

Calls to the amount of pounds per share have been made,
under which the sum of pounds has been received.

The liabilities of the company on the first day of January (or July)
were—

Debts owing to sundry persons by the company—

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

SECOND SCHEDULE.

(Section 82.)

THE COMPANIES (CONSOLIDATION) ACT, 1908.

STATEMENT IN LIEU OF PROSPECTUS

filed by

LIMITED,

pursuant to Section 82 of The Companies (Consolidation) Act, 1908.

Presented for filing by

The nominal share capital of the company - £

Divided into	- - - - -	Shares of £	each.
		" "	"
		" "	"

Names, descriptions, and addresses of directors or proposed directors.

Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1.	shares of £	fully paid.
	2.	£	shares upon which per share credited as paid.
	3.	debenture	£
	4.	Consideration.	

Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company.

Amount (in cash, shares, or debentures) payable to each separate vendor.

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £
	Cash - - £
	Shares - - £
	Debentures - - £
	Goodwill - - £

(a) For definition of vendor see Section 81 (2) of The Companies (Consolidation) Act, 1908.

(b) See Section 81 (3) of The Companies (Consolidation) Act, 1908.

STATEMENT IN LIEU OF PROSPECTUS—(continued).

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or	Amount paid „ payable.
Rate of the commission - - - - -	Rate per cent.
Estimated amount of preliminary expenses -	£
Amount paid or intended to be paid to any promoter.	Name of promoter.
Consideration for the payment.	Amount £
	Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.
(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)	

THIRD SCHEDULE.

(Section 118.)

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "The conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.			Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	merchant	200
2. John Smith of	in the county of	-	25
3. Thomas Green of	in the county of	-	30
4. John Thompson of	in the county of	-	40
5. Caleb White of	in the county of	-	15
6. Andrew Brown of	in the county of	-	5
7. Cæsar White of	in the county of	-	10
Total shares taken			325

Dated the day of 19 .

Witness to the above signatures—

A. B., No. 13 Fife Street, Clerkenwell, London.

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE, AND NOT HAVING A SHARE CAPITAL.*Memorandum of Association.*

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "The mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Charles White of	in the county of	

Dated, the day of 19 .

Witness to the above signatures—

A. B., No. 13 Hute Street, Clerkenwell, London.

396 *The Companies (Consolidation) Act, 1908.*

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF
ASSOCIATION.

Number of Members.

1. The Company, for the purpose of registration, is declared to consist of five hundred members.
2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.
5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.
6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.
8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.
9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.
11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:—

I, _____ of _____ Company, Limited,
being
a member of the _____ in the county of _____
do hereby appoint _____ of _____ Company, Limited, hereby
as my proxy, to vote for
me and on my behalf at the [ordinary or extraordinary, as the case
may be] general meeting of the company to be held on the
day of _____ and at any adjournment thereof.
Signed this _____ day of _____

398 *The Companies (Consolidation) Act, 1908.*

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of The Companies (Consolidation) Act, 1908, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by The Companies (Consolidation) Act, 1908, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert Rules as to Mode in which Business of Insurance is to be conducted.]

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of The Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Caesar White of	in the county of	

Dated the day of 19 .

Witness to the above signatures—

A. B., No. 13 White Street, Clerkenwell, London.

Third Schedule.

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FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are, "The facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.			Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	-	200
2. John Smith of	in the county of	-	25
3. Thomas Green of	in the county of	-	30
4. John Thompson of	in the county of	-	40
5. Caleb White of	in the county of	-	15
6. Andrew Brown of	in the county of	-	5
7. Cæsar White of	in the county of	-	10
Total shares taken			325

Dated the , day of , 19 .

Witness to the above signatures—

A. B., No. 13 Hute Street, Chalkenwell, London.

C.L.

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400 *The Companies (Consolidation) Act, 1908.*

Articles of Association to accompany preceding Memorandum of Association.

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.
2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.
3. All the articles of Table A of The Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.

- | | | |
|---------------------|------------------|-----------|
| 1. John Jones of | in the county of | merchant. |
| 2. John Smith of | in the county of | |
| 3. Thomas Green of | in the county of | |
| 4. John Thompson of | in the county of | |
| 5. Caleb White of | in the county of | |
| 6. Andrew Brown of | in the county of | |
| 7. Cæsar White of | in the county of | |
-

Dated the day of 19 .

Witness to the above signatures—

A. B., No. 13 Hute Street, Clerkenwell, London.

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY
HAVING A SHARE CAPITAL.

" *Memorandum of Association.*

- 1st. The name of the company is "The Patent Stereotype Company."
- 2nd. The registered office of the company will be situate in England.
- 3rd. The objects for which the company is established are, "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

Third Schedule.

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We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.			Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	-	3
2. John Smith of	in the county of	-	2
3. Thomas Green of	in the county of	-	1
4. John Thompson of	in the county of	-	2
5. Caleb White of	in the county of	-	2
6. Andrew Brown of	in the county of	-	1
7. Abel Brown of	in the county of	-	1
Total shares taken			12

Dated the day of 19 .

Witness to the above signatures—

A. B., No. 20 Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the articles of Table A of The Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles, and to apply to the company.

NAMES, ADDRESSES, AND DESCRIPTIONS OF SUBSCRIBERS.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Abel Brown of	in the county of	

Dated the day of 19 .

Witness to the above signatures—

A. B., No. 20 Bond Street, London.

402 *The Companies (Consolidation) Act, 1908.*

FORM E

(As required by Part II of the Act).

SUMMARY OF SHARE CAPITAL AND SHARES of
LIMITED, made up to the day of 19 (being the
fourteenth day after the date of the first ordinary general meeting in 19).
(Section 26.)

Nominal share capital £	divided into 1 {	shares of £	e.ch.
		shares of £	each.
Total number of shares taken up 1 to the day of 19	{ (which number must agree with the total shown in the list as held by existing members).		
Number of shares issued subject to payment wholly in cash	-		
Number of shares issued as fully paid up otherwise than in cash	-		
Number of shares issued as partly paid up to the extent of	{ per share otherwise than in cash		
2 There has been called up on each of shares	- £		
There has been called up on each of shares	- £		
2 There has been called up on each of shares	- £		
3 Total amount of calls received, including payments on application and allotment	£		
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	{ £		
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of	{ per share £		
Total amount of calls unpaid	£		
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary	{ £		
Total amount (if any) paid on 4 shares forfeited	£		
Total amount of shares and stock for which share warrants to bearer are outstanding	{ shares £ stock £		
Total amount of share warrants to bearer issued and surrendered respectively since date of last summary	{ issued £ surrendered £		
Number of shares or amount of stock comprised in each share warrant to bearer	{ number of shares £ amount of stock £		
Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight	{ £		

Statement in the form of a balance sheet made up to the day
of 19 containing the particulars of the capital, liabilities,
and assets of the company.

1 When there are shares of different kinds or amounts (e.g. Preference and Ordinary, or £10 and £5) state the numbers and nominal values separately.

2 Where various amounts have been called, or there are shares of different kinds, state them separately.

3 Include what has been received on forfeited as well as on existing shares.

4 State the aggregate number of shares forfeited (if any).

The Return must be signed at the end by the manager or secretary of the company.

Presented for filing by

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[illegible]

³ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

NAMES AND ADDRESSES of the persons who are the Directors of the
(), LIMITED, on the day of , 19 .

Names.	Addresses.

NOTE.—Banking companies must add a list of all their places of business.

(Signature).....

(State whether manager or secretary).....*

FORM F. ()

LICENCE TO HOLD LANDS (Section 20).

The Board of Trade hereby license the _____ to hold the lands hereunder described (*insert description of lands*) [or to hold lands not exceeding in the whole _____ acres].

The conditions of this licence are *(insert conditions, if any)*.

FOURTH SCHEDULE.

PART I.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL
(Section 181).

Orders :—

As to time for proving claims (Section 169).

As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of a company (Section 174).

As to meetings for ascertaining wishes of creditors or contributories (Section 219).

As to summoning meetings of creditors or contributories where a compromise is proposed (Section 120).

As to the examination of witnesses in regard to the property or affairs of a company (Section 227).

PART II.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO TAKE EFFECT
UNTIL RECLAIMING NOTE DISPOSED OF.

Orders :—

Restraining or permitting commencement or continuance of legal proceedings (Section 140, 142, 144, 266, 270, and 271).

Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision (Sections 149, 186, and 202).

Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property (Section 151).

Requiring the delivery of property or documents to the official liquidator (Section 164).

As to the arrest and detention of an absconding contributory and his property (Section 176).

Limiting the powers of provisional official liquidators (Section 151 Sub-Section (5)).

For continuance of winding up under supervision (Section 199).

FIFTH SCHEDULE.

PROVISIONS REFERRED TO IN SECTION 281 OF THE ACT.

provisions relating to—

- The conclusiveness of certificates of incorporation (Section 17);
- Restrictions on appointments or advertisement of directors (Section 72);
- Restrictions on commencement of business (Section 87);
- Returns as to allotments (Sections 88);
- Statutory meetings (Section 65);
- The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary (Section 26);
- The appointment and remuneration, and powers and duties, of auditors (Sections 112 and 113);
- Obligations of companies where no prospectus is issued (Section 82);
- Registration of mortgages and charges in England and Ireland (Section 93);
- Filing of accounts of receiver and manager (Section 95);
- Notice by liquidator in voluntary winding up of his appointment (Section 187);
- Rights of creditors in a voluntary winding up (Section 188);
- Requirements as to companies established outside the United Kingdom (Section 274); and
- Annual report by Board of Trade (Section 283).

SIXTH SCHEDULE.

PART I.

ENACTMENTS REPEALED (Section 286).

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 89.	The Companies Act, 1862 -	The whole Act.
27 Vict. c. 19.	The Companies Seals Act, 1864.	The whole Act.
30 & 31 Vict. c. 131.	The Companies Act, 1867 -	The whole Act.
32 & 33 Vict. c. 19.	The Stannaries Act, 1869 -	Sections twenty-five, twenty-six, and thirty-four.
33 & 34 Vict. c. 104.	The Joint Stock Companies Arrangement Act, 1870.	The whole Act.
37 & 38 Vict. c. 94.	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77.	The Supreme Court of Judi- cature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26.	The Companies Act, 1877 -	The whole Act.
40 & 41 Vict. c. 57.	The Supreme Court of Judi- cature (Ireland) Act, 1877	Sub-section (1) of section twenty-eight, so far as relates to the winding up of companies.
42 & 43 Vict. c. 76.	The Companies Act, 1879 -	The whole Act.
43 Vict. c. 19.	The Companies Act, 1880 -	The whole Act.
46 & 47 Vict. c. 30.	The Companies (Colonial Registers) Act, 1883.	The whole Act.
49 Vict. c. 23.	The Companies Act, 1886 -	The whole Act.
50 & 51 Vict. c. 43.	The Stannaries Act, 1887 -	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section (being paragraph (2)); and section thirty-one.
50 & 51 Vict. c. 47.	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888 -	Sections one, two, and three, so far as they relate to companies.

408 *The Companies (Consolidation) Act, 1908.*

ENACTMENTS REPEALED—(continued).

Session and Chapter.	Short Title of Act.	Extent of Repeal.
52 & 53 Vict. c. 42.	The Revenue Act, 1889 -	Section eighteen.
52 & 53 Vict. c. 60.	The Preferential Payments in Bankruptcy (Ireland) Act, 1889.	Section four, so far as relates to companies
53 & 54 Vict. c. 62.	The Companies (Memorandum of Association) Act, 1890.	The whole Act.
53 & 54 Vict. c. 63.	The Companies (Winding up) Act, 1890.	The whole Act.
53 & 54 Vict. c. 64.	The Directors Liability Act, 1890.	The whole Act.
56 & 57 Vict. c. 58.	The Companies (Winding up) Act, 1893.	The whole Act.
60 & 61 Vict. c. 19.	The Preferential Payments in Bankruptcy Amendment Act, 1897.	The whole Act.
61 & 62 Vict. c. 26.	The Companies Act, 1898 -	The whole Act.
63 & 64 Vict. c. 48.	The Companies Act, 1900 -	The whole Act.
7 Edw. 7. c. 24.	The Limited Partnerships Act, 1907.	Sub-section (4) of section six
7 Edw. 7. c. 50.	The Companies Act, 1907 -	The whole Act.
8 Edw. 7. c. 12.	The Companies Act, 1908 -	The whole Act.

PART II.

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND (7 & 8 VICT. c. 113), s. 47.
(Section 286.)

• *Existing companies to have the powers of suing and being sued.*

• Every company of more than six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of The Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

• THE JOINT STOCK BANKING COMPANIES ACT, 1857, PART OF S. 12.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of The Joint Stock Banking Companies Act, 1857, have carried on such business.

THE COMPANIES ACT, 1913.

[3 and 4 GEORGE V., CHAPTER 25.]

An Act to Amend the Provisions of The Companies (Consolidation) Act, 1908,^o
with respect to Private Companies. [15th August, 1913.]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Where the articles of a company include the provisions which, by section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, as amended by this Act, are required to be included therein in order to constitute the company a private company for the purposes of that Act, and default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions of that Act mentioned in the Schedule to this Act, and thereupon the said provisions shall apply to the company as if it were not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

(2) In subsection (1) of the said section one hundred and twenty-one of the Companies (Consolidation) Act, 1908, for paragraph (b) the following paragraph shall be substituted:—

“(b) limits the number of its members (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company) to fifty; and”

(3) Every private company shall send with the Annual List of Members and Summary required to be sent under section twenty-six of the Companies (Consolidation) Act, 1908, a certificate signed by a director or the secretary that the company has not, since the date of the last Return, or in the case of a first Return since

the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company; and, where the list of members discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that such excess consists wholly of persons who under section one hundred and twenty-one of that Act, as amended by this section, are to be excluded in reckoning the number of fifty.

2. This Act may be cited as the Companies Act, 1913, and shall be construed as one with the Companies (Consolidation) Act, 1908, and that Act and this Act may be cited together as the Companies Acts, 1908 and 1913.

SCHEDULE.

• PROVISIONS OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

Subsection (3) of section twenty-six (which relates to the making of an Annual Return in the form of a balance sheet).

• Section one hundred and fourteen (which relates to the right of preference shareholders and debenture holders to receive and inspect balance sheets and reports).

Section one hundred and fifteen (which relates to the minimum number of members with which a company may continue to carry on business).

Paragraph (iv) of section one hundred and twenty-nine (which makes the reduction of the number of members of a company below the minimum a ground for the winding up of the company).

**THE COMPANIES (FOREIGN INTERESTS)
ACT, 1917.**

[7 and 8 GEORGE V., CHAPTER 18.]

An Act to Prohibit the Alteration, except with the Consent of the Board of Trade, of Articles of Association or Regulations which restrict Foreign Interests in Companies, and for other purposes connected therewith.

[24th May, 1917.]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Where any provision in the articles of association of a registered company is designed to restrict or limit, or has the effect of restricting or limiting, the proportion or amount of the capital of the company or of the voting power in the company, or of the control upon the Board of the company which may be held or exercised by or on behalf of aliens, or is otherwise designed to restrict or limit, or has the effect of restricting or limiting, the interests or authority of aliens in the company or the control of the company by aliens, an alteration of that provision shall not be of any effect, notwithstanding anything in any other Act, until it has received the written consent of the Board of Trade.

(2) The decision of the Board of Trade as to whether an alteration of a provision requires the consent of the Board under this Act or not shall be final and conclusive.

(3) This Act shall apply to any regulations or provisions in the nature of regulations affecting an incorporated company, not being a registered company, which can be altered by the company, in the same manner as it applies to the articles of association of a registered company.

(4) In this Act the expression "registered company" means a company as defined by section two hundred and eighty-five of the Companies (Consolidation) Act, 1908, and the expression "alien" includes any body corporate not incorporated in some part of His Majesty's dominions and any class of aliens.

2. The following provisions shall apply to every company in whose articles of association is contained any provision such as mentioned in section one (1) of this Act:—

- (1) A resolution for the voluntary winding-up of the company shall be of no effect unless the Board of Trade in its discretion authorises or ratifies it by a written consent.
- (2) The Court which has jurisdiction to wind up the company may in its discretion refuse to make a winding-up order.
- (3) In the exercise of its discretion the Board of Trade or the Court, as the case may be, shall be guided by the consideration whether the winding-up is bonâ fide with a view to the discontinuance of the undertaking, or is with a view to continuing the undertaking free from any restrictions or limitations such as are mentioned in section one (1) of this Act which are contained in the company's articles of association or any of such restrictions or limitations.
- (4) The Board of Trade in giving consent or the Court in making a winding-up order, as the case may be, may impose such terms or conditions for giving effect to this Act as it thinks fit.

3. This Act may be cited as The Companies (Foreign Interests) Act, 1917.

THE COMPANIES (PARTICULARS AS TO DIRECTORS) ACT, 1917.

[7 and 8 GEORGE V., CHAPTER 28.]

An Act to Provide for the Disclosure of certain Particulars respecting the Directors of Companies. [2nd August, 1917.]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. In addition to the particulars with respect to the persons who are the directors, or occupy the position of directors, which by section twenty-six of The Companies (Consolidation) Act, 1908, are required to be included in the annual summary, or, in the case of a company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom, are, by section two hundred and seventy-four of that Act, required to be included amongst the particulars to be filed with the Registrar of Companies, there shall be included such particulars* with respect to those persons as would be required to be furnished with respect to them under The Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and the register required to be kept by a company under section seventy-five of The Companies (Consolidation) Act, 1908, shall include such particulars as aforesaid, and the obligation of the company under that section, or in the case of a company incorporated outside the United Kingdom under section two hundred and seventy-four of the said Act, from time to time to notify to the registrar any change among its directors shall include an obligation so to notify any change in any such particulars.

2.—(1) Every company which has been registered between the twenty-second day of November, nineteen hundred and sixteen, and the passing of this Act, and every company incorporated outside the United Kingdom which has before the passing of this Act established a place of business within the United Kingdom, shall, within one month after the passing of this Act, and every company registered after the passing of this Act shall, within one month of the registration of the company, send to the registrar of companies, in such form as may be prescribed by the Board of Trade, such

* See The Registration of Business Names Act, 1916, Section 3 (1) (d), p. 417.

particulars* respecting the directors of the company and, except in the case of a company incorporated outside the United Kingdom, respecting the persons who since the registration of the company have been directors of the company, as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and if default is made in compliance with this section, the company shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and every director, secretary, and officer of the company who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

(2) Sections eighteen and nineteen of the Registration of Business Names Act, 1916, with respect to the publication in trade catalogues, trade circulars, show cards, and business letters of certain particulars, shall after the expiration of three months from the passing of this Act apply to every company which since the said twenty-second day of November, nineteen hundred and sixteen, has been registered or, in the case of a company incorporated outside the United Kingdom which has since the said twenty-second day of November, nineteen hundred and sixteen, established a place of business within the United Kingdom, or which may after the passing of this Act be registered or establish a place of business within the United Kingdom, as if the directors of the company were partners in a firm required to be registered under the first-mentioned Act :

Provided that if special circumstances exist which render it, in the opinion of the Board, expedient that such an exemption should be granted, the Board of Trade may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

3. For the purposes of this Act and of sections twenty-six, seventy-five, and two hundred and seventy-four of The Companies (Consolidation) Act, 1908, as amended by this Act, the expression "director" shall include any person who occupies the position of a director and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

4. This Act may be cited as The Companies (Particulars as to Directors) Act, 1917; and The Companies Acts, 1908 and 1913, The Companies (Foreign Interests) Act, 1917, and this Act may be cited together as The Companies Acts, 1908 to 1917.

* See The Registration of Business Names Act, 1916, Section 3 (1) (d), p. 417.
C.L.

REGISTRATION OF BUSINESS NAMES ACT, 1916.

[6 and 7 GEORGE V., CHAPTER 58.]

[When reading the Act in conjunction with The Companies
(Particulars as to Directors) Act, 1917, regard should
be had to the variations indicated in the footnotes]

An Act to Provide for the Registration of Firms and Persons carrying on Business under
Business Names and for the Purposes connected therewith. [22nd December, 1916]

BE IT ENACTED by the King's Most Excellent Majesty, by and
with the advice and consent of the Lords Spiritual and
Temporal, and Commons, in this present Parliament assembled,
and by the authority of the same, as follows:—

1. Subject to the provisions of this Act—

- (a) Every firm having a place of business in the United Kingdom and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names;
- (b) Every individual having a place of business in the United Kingdom and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof;
- (c) Every individual or firm having a place of business in the United Kingdom, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage,

shall be registered in the manner directed by this Act:—

Provided that—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and
- (ii) where two or more individual partners have the same surname, the addition of an s at the end of that surname shall not of itself render registration necessary; and
- (iii) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary; and
- (iv) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

2. Where a firm, individual, or corporation having a place of business within the United Kingdom carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the schedule to this Act:

Provided that where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.

3.—(1) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the registrar at the register office in that part of the United Kingdom to which the principal place of business of the firm or person is situated a statement in writing in the prescribed form containing the following particulars:—

- (a) The business name;
- (b) The general nature of the business,
- (c) The principal place of the business,
- (d) Where the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner,
- (e) Where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of such individual,
- (f) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office;
- (g) If the business is commenced after the passing of this Act, the date of the commencement of the business.

(2) Where a business is carried on under two or more business names, each of those business names must be stated.

4. The statement required for the purpose of registration must in the case of an individual be signed by him, and in the case of a corporation by a director or secretary thereof, and in the case of a firm either by all the individuals who are partners, and by a director or the secretary of all corporations which are partners or by some individual who is a partner, or a director or the secretary of some corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory. Provided that no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for or against any such other person in respect of his liability or non-liability as a partner, and that the High Court or a judge thereof may on application of any person alleged or claiming to be a partner direct the rectification of the register and decide any question arising under this section.

5. The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be: Provided that if such firm or person has carried on such business before the passing of this Act or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the passing of this Act, and that if at the expiration of the said two months the conditions affecting the firm or persons have ceased to be such as to require registration under this Act, the firm or person need not be registered so long as such conditions continue.

* For the word "Partners" read "Directors"

This section shall apply, in the case where registration is required in consequence of a change of name, as if for references to the date of the commencement of the business there were substituted references to the date of such change.

6. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person such firm or person shall, within fourteen days after such change, or such longer period as the Board of Trade may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or delivery to the registrar in that part of the United Kingdom in which the aforesaid particulars are registered a statement in writing in the prescribed form specifying the nature and date of the change signed, and where necessary verified, in like manner as the statement required on registration.

7. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the registrar within such time as may be specified in the order.

8.—(1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise :

Provided always as follows :—

- (a) The defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract,
 - (b) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;
 - (c) If any action or proceedings shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim set off or otherwise, such rights as he may have against that party in respect of such contract.
- (2) In this section the expression "court" means the "High Court" or a judge thereof :

Provided that, without prejudice to the power of the High Court, or a judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a county court, the county court may, as respects that contract, grant such relief as aforesaid.

9. If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall, on summary conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

10.—(1) The Board of Trade may require any person to furnish to the Board such particulars as appear necessary to the Board for the purpose of ascertaining whether or not he or the firm of which he is partner should be registered under this Act, or an alteration made in the registered particulars, and may also in the case of a corporation require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars, and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall on summary conviction be liable to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding twenty pounds or to both such imprisonment and fine.

(2) If from any information so furnished it appears to the Board of Trade that any firm or person ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Board may require the firm or person to furnish to the registrar the required particulars within such time as may be allowed by the Board, but, where any default under this Act has been discovered from the information acquired under this section, no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Board under this section to furnish particulars to the registrar.

11. On receiving any statement or statutory declaration made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not kept so exhibited, every partner in the firm or the person, as the case may be, shall be liable on summary conviction to a fine not exceeding twenty pounds.

12. At each of the register offices hereinafter referred to the registrar shall keep an index of all the firms and persons registered at that office under this Act.

13.—(1) If any firm or individual registered under this Act ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or of the individual or if he is dead his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the registrar notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

(2) On receipt of such a notice as aforesaid the registrar may remove the firm or individual from the register.

(3) Where the registrar has reasonable cause to believe that any firm or individual registered under this Act is not carrying on business he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof, the firm or individual may be removed from the register.

(4) If the registrar either receives an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within one month after sending the notice receive an answer, he may remove the firm or individual from the register.

14.—(1) Where any business name which the business of a firm or individual is carried on contains the word "British" or any other word which, in the opinion of the registrar, is calculated to lead to the belief that the business is under British ownership or control, and the registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, the registrar shall refuse to register such business name or, as the case may be, remove such business name from the register, but any person aggrieved by a decision of the registrar under this provision may appeal to the Board of Trade, whose decision shall be final.

(2) The registration of a business name under this Act shall not be construed as authorising the use of that name if apart from such registration the use thereof could be prohibited.

15. There shall be offices in London, Edinburgh, and Dublin for the registration of firms and persons whose principal places of business are respectively situated in England and Wales, Scotland, and Ireland, and the registrar of companies in each of those cities or such other person as the Board of Trade may determine shall be the registrar for the purposes of this Act.

16. At any time after the expiration of six months from the passing of this Act or of such longer period, not being more than nine months from the passing of this Act, as the Board of Trade may by order direct, any person may inspect the documents filed by the registrar on payment of such fees as may be prescribed not exceeding one shilling for each inspection, and any person may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement to be certified by the registrar or assistant registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as may be prescribed not exceeding two shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words, or in Scotland for each sheet of two hundred words, of the entry, copy, or extract.

A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy or extract under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar), shall, in all legal proceedings, civil or criminal, be received in evidence.

17.—(1) The Board of Trade may make rules (but as to fees with the concurrence of the Treasury) concerning any of the following matters:—

- (a) The fees to be paid to the registrar under this Act, so that they do not exceed the sum of five shillings for the registration of any one statement;
- (b) The forms to be used under this Act;
- (c) The duties to be performed by any registrar under this Act;
- (d) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;
- (e) Generally the conduct and regulation of registration under this Act, and any matters incidental thereto.

(2) All fees payable in pursuance of any such rules shall be applied as the Treasury may direct.

18.—(1) After the expiration of three months from the passing of this Act every individual and firm required by this Act to be registered* shall, in all trade catalogues, trade circulars, showcards, and business letters, on or

* For the words printed in italics read "Every Company registered after 22nd November, 1916, and every Foreign Company which after that date establishes a place of business in the United Kingdom."

in which the business name^b appears and which are issued or sent by the individual or firm[†] to any person in any part of His Majesty's dominions, have mentioned in legible characters—

- (a) in the case of an individual, his present Christian name or the initials thereof and present surname, any former Christian name or surname, his nationality if not British, and if his nationality is not his nationality of origin his nationality of origin; and
- (b) in the case of a firm[†] the present Christian names or the initials thereof and present surnames, any former Christian names and surnames, and the nationality if not British, and if the nationality is not the nationality of origin the nationality of origin of all the partners in the firm[‡]; or, in the case of a corporation being a partner, the corporate name.

(2) If default is made in compliance with this section the individual, or, as the case may be, every member of the firm shall be liable on summary conviction for each offence to a fine not exceeding five pounds:

Provided that no proceedings shall in England or Ireland be instituted under this section except by or with the consent of the Board of Trade.

19. Where a corporation[§] is guilty of an offence under this Act, every director, secretary, and officer of the corporation[§] who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

20. Anything required or authorised by this Act to be done by the Board of Trade may be done by the President or a Secretary or Assistant Secretary of the Board, or any other person authorised in that behalf by the President of the Board.

21. There shall be paid out of moneys to be provided by Parliament such remuneration in respect of the duties performed under this Act as the Treasury may assign.

22. In the construction of this Act the following words and expressions shall have the meanings in this section assigned to them, unless there be something in the subject or context repugnant to such construction:—

"Firm" shall mean an unincorporate body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit, but shall not include any unincorporated company which was in existence on the second day of November, eighteen hundred and sixty-two:

"Business" shall include profession:

"Individual" shall mean a natural person and shall not include a corporation:

"Christian name" shall include any forename:

"Initials" shall include any recognised abbreviation of a Christian name:

In the case of a peer or person usually known by a British title different from his surname, the title by which he is known shall be substituted in this Act for his surname:

References in this Act to a former Christian name or surname shall not, in the case of natural-born British subjects, include a former Christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years, and, in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage:

* For "business name" read "name of Company."

† For "firm" read "Company."

‡ For "partners in the firm" or "partner" read "Directors" or "Director"

§ For "Corporation" read "Company."

References in this Act to a change of name shall not include, in the case of natural-born British subjects, a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years; or, in the case of a peer or a person usually known by a British title different from his surname, the adoption of or succession to the title:

"Business name" shall mean the name or style under which any business is carried on, whether in partnership or otherwise:

"Foreign firm" shall mean any firm, individual, or corporation whose principal place of business is situate outside His Majesty's dominions:

"Showcards" shall mean cards containing or exhibiting articles dealt with, or samples or representations thereof:

"Prescribed" shall mean prescribed by rules made in pursuance of this Act.

23.—(1) In the application of this Act to Scotland—

"Court of Session" shall be substituted for "High Court";

"Sheriff court" shall be substituted for "county court";

"Trustee on a sequestrated estate" shall be substituted for "trustee in bankruptcy";

"Receiver or manager appointed by any court" shall include "judicial factor"; and

"Joint tenants" and "tenants in common" shall mean pro indiviso proprietors.

24. In the application of this Act to Ireland the expression "trustee in bankruptcy" shall be construed as including an assignee in bankruptcy and a trustee of the estate of an arranging debtor.

25. This Act may be cited as The Registration of Business Names Act, 1916.

SCHEDULE.

Description of Firm &c	The additional Particulars.
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee	The present Christian name and surname, any former name, nationality, and, if that nationality is not the nationality of origin, the nationality of origin, and usual residence or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on. Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on. Provided that if the business is carried on as agent for three or more foreign firms it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.

STATUTORY RULES AND ORDERS,

1921, No. ¹²⁴⁷
L.16

COMPANY, ENGLAND.—COMPANIES (WINDING UP).

The Companies (Winding-Up) Rules, 1921, dated 26th July, 1921, made pursuant to Section 237 of The Companies (Consolidation) Act, 1908 (8 Edw. 7 c. 69.)

Preparation of Statement of Affairs. Form 26.

1.

Meeting of Creditors in a Voluntary Winding-up.

2. The following Rule shall be inserted in the Companies (Winding-up) Rules, 1909, after Rule 149, and shall stand as Rule 149A:—

“149A. (1) Except where and so far as the nature of the subject matter or the context may otherwise require, the preceding Rules 123 to 132 both inclusive, 134, and 138 to 140 both inclusive, so far as they relate to Liquidator's meetings of creditors, shall apply to meetings of creditors held in pursuance of section 188 of the Act, but so nevertheless that the said Rules shall take effect as to such last mentioned meetings subject and without prejudice to any express provision of the Act.

(2) The Chairman of the meeting shall have power to adjudicate upon the right of a creditor to vote and the amount for which he should be allowed to vote, but the decision of the Chairman of the meeting shall be subject to appeal to the Court.

(3) For the purpose of voting, a secured creditor shall, unless he surrenders his security, lodge with the Liquidator before the meeting a statement giving the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote in respect of the balance (if any) due to him after deducting the value of his security. The vote of a secured creditor who has not complied with this Rule shall not be counted at the meeting.

(4) No solicitation shall be used by or on behalf of any person whom the Court is asked to appoint Liquidator under the provisions of section 188, in obtaining votes or proxies or in procuring his appointment, and on every application to the Court to appoint a Liquidator under that section, the applicant

shall, unless the Court otherwise directs, produce an affidavit by the proposed Liquidator¹ proving that no such solicitation has been used by or on behalf of such proposed Liquidator."

3. These Rules may be cited as the Companies (Winding-up) Rules, 1921, and shall come into operation on the 1st day of September, 1921.

Dated the 26th day of July, 1921.

The following are the Rules referred to:—

Summoning of Meetings.

123. The official receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories.

The notice of each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Proof of Notice. Forms 76 and 77.

124. A certificate by the official receiver or other officer of the court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor, or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of Meetings.

125. The meetings shall be held at such place as is in the opinion of the official receiver or liquidator most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

Costs of Calling Meeting.

126. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum

as may be required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first twenty creditors or contributories, one shilling per creditor or contributory for the next thirty creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first fifty. The said costs shall be repaid out of the assets of the company if the court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct.

Chairman of Meeting. Form 79.

127. Where a meeting is summoned by the official receiver or liquidator, he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors and contributories the chairman shall be such person as the meeting by resolution shall appoint.

Ordinary Resolution of Creditors and Contributories.

128. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the Company.

Copy of Resolution to be Filed.

129. The official receiver or as the case may be the liquidator shall file with the registrar a copy certified by him of every resolution of a meeting of creditors or contributories.

Non-reception of Notice by a Creditor.

130. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Adjournments. Form 78.

131. The chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

Quorum.

132.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint not being less than seven or more than twenty-one days.

Cases in which Creditors may not Vote.

134. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Minutes of Meeting.

138. The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT.

Proxies.

139. A creditor or a contributory may vote either in person or by proxy. The succeeding rules as to proxies shall not (unless otherwise directed by the court) apply to a court meeting of creditors or contributories prior to the first meeting.

Form of Proxies, Forms 80 and 81.

140. Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a commissioner to administer oaths in the Supreme Court.

Forms of Proxy to be Sent with Notices.

141. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

General Proxies to Managers or Clerks.

142. A creditor or a contributory may give a general proxy to his manager or clerk or any other person in his regular employment. In any such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

Special Proxies.

143. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof:—

- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

Solicitation by Liquidator to Obtain Proxies.

144. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

Proxies to Official Receiver or Liquidator.

145. A creditor or a contributory may appoint the official receiver or liquidator to act as his general or special proxy.

*Holder of Proxy not to Vote on Matter in which he is
Financially Interested.*

146. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise

than as creditor rateably with the other creditors of the company. Provided that, where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

Proxies. Forms 80 and 81.

147.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the court otherwise directs.

(2) In every other case a proxy shall be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

(4) Where a limited company is a creditor any person who is duly authorised under the seal of the creditor company to act generally on behalf of the creditor company at meetings of creditors and contributories and to appoint himself or any other person to be the creditor company's proxy, may fill in and sign the form of proxy on the creditor company's behalf and appoint himself to be the creditor company's proxy, and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the creditor company.

Use of Proxies by Deputy.

148. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

Filling in Where Creditor Blind or Incapable.

149. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

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OF

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SETTLED BY

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To be paid on

INCORPORATION OF COMPANIES

Having a Share Capital.

THE following Table indicates the Duties and Fees payable on Registration of PRIVATE COMPANIES HAVING A SHARE CAPITAL and governed by Special Articles of Association. In the total are included the Deed Stamps of 10s. each payable on the Memorandum and Articles and the Fee Stamps of 5s. which have to be impressed on the Articles and on the following documents, the total amounting to £2:—Notice of Situation of Registered Office (Form No. 4); Particulars Respecting Directors (Form No. 9A); Declaration of Compliance with the Requirements of The Companies (Consolidation) Act, 1908 (Form No. 41):—

NOMINAL SHARE CAPITAL.	<i>Ad Valorem</i> Duty on Statement of Capital.	Fee Stamp on Memorandum of Association.	TOTAL DUTY AND FEES.
£100 ..	£1 0 ..	£2 0 ..	£5 0
250 ..	3 0 ..	2 0 ..	7 0
500 ..	5 0 ..	2 0 ..	9 0
1,000 ..	10 0 ..	2 0 ..	14 0
1,500 ..	15 0 ..	2 0 ..	19 0
2,000 ..	20 0 ..	2 0 ..	24 0
3,000 ..	30 0 ..	3 0 ..	35 0
4,000 ..	40 0 ..	4 0 ..	46 0
5,000 ..	50 0 ..	5 0 ..	57 0
6,000 ..	60 0 ..	5 5 ..	67 5
7,000 ..	70 0 ..	5 10 ..	77 10
8,000 ..	80 0 ..	5 15 ..	87 15
9,000 ..	90 0 ..	6 0 ..	98 0
10,000 ..	100 0 ..	6 5 ..	108 5
11,000 ..	110 0 ..	6 10 ..	118 10
12,000 ..	120 0 ..	6 15 ..	128 15
13,000 ..	130 0 ..	7 0 ..	139 0
14,000 ..	140 0 ..	7 5 ..	149 5
15,000 ..	150 0 ..	7 10 ..	159 10
16,000 ..	160 0 ..	7 15 ..	169 15
17,000 ..	170 0 ..	8 0 ..	180 0
18,000 ..	180 0 ..	8 5 ..	190 5
19,000 ..	190 0 ..	8 10 ..	200 10

116 to 118, CHANCERY LANE, LONDON, W.C. 2.
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JORDAN & SONS, LIMITED,

DUTIES AND FEES &c.—continued.

NOMINAL SHARE CAPITAL.		Ad Valorem Duty on Statement of Capital.		Fee Stamp on Memorandum of Association		TOTAL DUTY AND FEES.
£20,000	..	£200 0	..	£8 15	..	£210 15
25,000	..	250 0	..	10 0	..	262 0
30,000	..	300 0	..	11 5	..	313 5
35,000	..	350 0	..	12 10	..	364 10
40,000	..	400 0	..	13 15	c.	415 15
45,000	..	450 0	..	15 0	..	467 0
50,000	..	500 0	..	16 5	..	518 5
60,000	..	600 0	..	18 15	..	620 15
70,000	..	700 0	..	21 5	..	723 5
75,000	..	750 0	..	22 10	..	774 10
80,000	..	800 0	..	23 15	n	825 15 n
90,000	..	900 0	..	26 5	p	928 5 p
100,000	..	1,000 0	..	28 15	q	1,030 15
150,000	..	1,500 0	..	31 5	..	1,533 5
200,000	..	2,000 0	..	33 15	..	2,035 15
250,000	..	2,500 0	..	36 5	..	2,538 5
300,000	..	3,000 0	..	38 15	..	3,040 15
350,000	..	3,500 0	..	41 5	..	3,543 5
400,000	..	4,000 0	..	43 15	..	4,045 15
450,000	..	4,500 0	..	46 5	..	4,548 5
500,000	..	5,000 0	..	48 15	..	5,050 15
525,000	..	5,250 0	..	50 0	..	5,302 0
600,000	..	6,000 0	..	50 0	..	6,052 0
700,000	..	7,000 0	..	50 0	..	7,052 0
800,000	..	8,000 0	..	50 0	..	8,052 0
900,000	..	9,000 0	..	50 0	..	9,052 0
1,000,000	..	10,000 0	..	50 0	..	10,052 0

And so on at the rate of £1 further Capital Duty for every additional £100 or fraction thereof. £50 is the maximum Fee Stamp imposed on the Memorandum of Association.

Public Companies.—In the case of PUBLIC COMPANIES the following further documents are required, a 5s. Fee Stamp being payable on each:—

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JORDAN & SONS, LIMITED,

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FOR SECURING

Issues of Debentures and Debenture Stock

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See also List of WINDING-UP FORMS, p. xix.

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BODIES

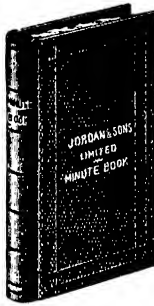
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19B	Ditto (Quarto)	7/6	—
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22	Directors' Minute Book (190 Pages and Index)	15/6	25/6
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33	Ditto Ditto (46 Folios), with Register of Transfers	14/6	24/6
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93	Ditto (numbered 1 to 2000)	26/6		36/6
93A	Ditto (numbered 1 to 2500)	30/-		40/-
94	Ditto (numbered 1 to 3000)	33/6		43/6
94A	Ditto (numbered 1 to 3500)	37/6		47/6
95	Ditto (numbered 1 to 4000)	42/-		52/-
96	Ditto (numbered 1 to 5000)	50/-		60/-
106	Shareholders' Address Book (78 Pages)	13/-		23/-
107	Ditto (Alphabetical)	15/-		25/-
112	Register of Returns of Allotments	12/-		22/-
112A	Ditto Cloth, 7/6	—		—
115	Register of Directors or Managers	12/-		22/-
115A	Ditto Cloth, 7/6	—		—
118A	Directors' Attendance Book Quarto, Limp Roan, 9/6	—		—
118B	Ditto Octavo, ditto 6/6	—		—
121	Register of Debentures	13/-		23/-
121A	Ditto Cloth, 7/6	—		—
122	Register of Debenture Holders (with Interest Account at foot of each page)	15/-		25/-
123	Register of Debentures, with Register of Transfers	15/-		25/-
124	Register of Transfers of Debentures	13/1		23/-
125	Register of Debenture Holders (78 Accounts)	13/-		23/-
126	Ditto (with Register of Transfers of Debentures)	15/-		25/-
127	Register of Debenture Stock Holders (78 Accounts)	13/-		23/-
128	Ditto (with Register of Transfers)	15/-		25/-
129	Register of Transfers of Debenture Stock	13/-		23/-
	Postage extra in all cases.			

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 2.

JORDAN & SONS, LIMITED,

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No.	REGISTERS AND ACCOUNT BOOKS—continued.	Half Bound	Whole
		Red Basil Cloth Sides	Bound Red Basil
148	Register of Mortgages and Bonds (39 Folios)	13/-	23/-
148A	Ditto (23 Folios) Cloth 7/6	—	—
151	Dividend Account Book (39 Folios)	13/-	23/-
152	Debenture Interest Account Book (39 Folios)	13/-	23/-
153	Debenture Stock Interest Account Book	13/-	23/-
160	Register of Calls (39 Folios)	13/-	23/-
163	Register of Seals (78 Pages)	13/-	23/-
166	Register of Documents (39 Folios)	13/-	23/-
169	Guard Book, for Transfers, Proxies, &c.	21/-	—
170	Ditto Demy	31/-	—
172	Register of Letters Received (92 Pages) ... Cloth, 7/6	—	—
173	Register of Letters Dispatched (92 Pages) Cloth, 7/6	—	—
178	Transfer Certificate Book (39 Folios)	13/-	23/-
184	Register of Receipts and Payments (46 Folios)	13/-	23/-
187	Visitors' Book, for Clubs (188 Pages)	15/-	25/-
190	Register of Probates (39 Folios)	13/-	23/-
191	Register of Insurance Policies ... Cloth, 7/6	—	—
192	Register of Guests (375 Entries) for Hotels, Boarding Houses, &c. ... Cloth Bound, 7/-	10/-	—
193	Register of Investments (74 Folios) ... F ^{cap} Quarto	10/-	—
196	Petty Cash Book (special ruling), 94 Folios F ^{cap} Oblong	13/-	—
200	Cash Book (95 Folios), double cash ruling	13/6	23/6
201	Ditto (191 Folios), double cash ruling	23/6	33/6
202	Ditto (95 Folios), double cash ruling Second quality	7/6	—
202A	Ditto (95 Folios), treble cash ruling	7/6	—
203	Ditto (143 Folios), double cash ruling Second quality	8/9	—
204	Ditto (191 Folios), double cash ruling Second quality	10/-	—
210	Journal (190 Pages)	13/6	23/6
211	Ditto (382 Pages)	23/6	33/6
212	Ditto (190 Pages) Second quality	7/6	—
213	Ditto (286 Pages) Second quality	8/9	—
214	Ditto (382 Pages) Second quality	10/-	—
220	Ledger, Single (81 Folios and Index), double cash ruling...	13/6	26/6
221	Ditto (165 Folios and Index), double cash ruling	23/6	33/6
222	Ditto (81 Folios and Index), double cash ruling...	7/6	—
222A	Ditto (81 Folios and Index), single cash ruling ...	7/6	—
223	Ditto (129 Folios and Index), double cash ruling	8/9	—
224	Ditto (165 Folios and Index), double cash ruling	10/-	—
226	Ledger, Double (162 Pages and Index)	13/6	23/6
227	Ditto (330 Pages and Index)	23/6	33/6
228	Ditto (162 Pages and Index) Second quality	7/6	—
229	Ditto (258 Pages and Index) Second quality	8/9	—
229A	Ditto (330 Pages and Index) Second quality	10/-	—
234	Investors' Account Book, comprising Cash Book, Investment Ledger and Register of Dividends, General Ledger, Annual Summary of Investments, Memoranda, Address Book and Index (Size of page 9 ¹ / ₂ × 7 ¹ / ₂)	21/-	—

116 to 118, CHANCERY LANE, LONDON, W.C. 2.

AND 13, BROAD STREET PLACE, E.C. 2.

Share Certificates

Specially Printed from Copperplate on Hand-made "Loan" paper from engraved plates designed to meet the taste of the Company.

Printed from Letterpress in superior style on Hand-made "Loan" paper. Book of 25 from 23s.; 50 from 26s. 6d.; 100 from 33s.

Specimens and Estimates submitted by return of post.

When asking for Specimens customers are requested to state the Nominal Capital of the Company, the classes into which it is divided, and the number of Certificates required in each class.

BLANK SHARE CERTIFICATES

FOR SMALL COMPANIES.

(SINGLE FORMS.)

A superior Blank Form of Share Certificate for Name of Company to be written in; printed from copperplate.

- 524. For fully paid Shares.
- 525. For partly paid Shares.
- 526. For fully paid Ordinary Shares.
- 527. For partly paid Ordinary Shares.
- 528. For fully paid Preference Shares.
- 529. For partly paid Preference Shares.

2d. each.

(BOUND FORMS.)

The above varieties of superior Blank Share Certificates, bound in books of 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.

- 524A. For fully paid Shares.
- 525A. For partly paid Shares.
- 526A. For fully paid Ordinary Shares.
- 527A. For partly paid Ordinary Shares.
- 528A. For fully paid Preference Shares.
- 529A. For partly paid Preference Shares.

If desired blank Certificates can be supplied with the name of the Company specially printed. Price per book of 25, 13s. 6d.; 50, 19s. 6d.; 100, 25s.

Postage extra in all cases.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

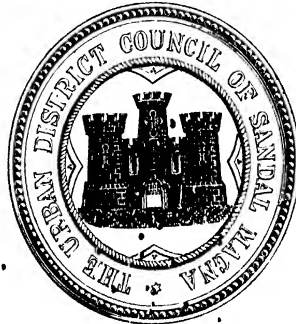
AND 13 BROAD STREET PLACE, E.C. 2.

SEALS

For Companies, Corporations, and Notaries.

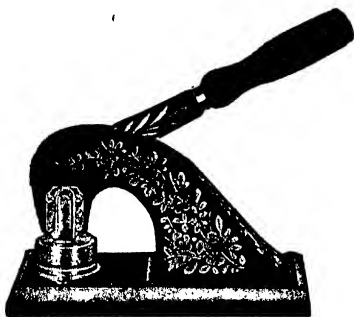
JORDAN & SONS, LIMITED, are noted for the high quality of and artistic taste displayed in the Seals designed and engraved by them.

They have exceptional facilities for the rapid execution of orders in this Department, and can supply Seals, where necessary, at exceedingly short notice.



116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 2.

**COMMON SEAL**

Engraved and Fitted
to Lever Press

similar to this

From **£1 10s. 0d.**

Second Quality Press

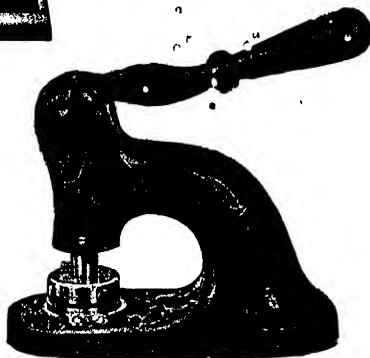
From **£1 5s. 0d.**

**COMMON
SEAL**

Engraved and Fitted to
Lever Press

similar to this,

From **£2 15s.**

**EXTRA DEEP
PATTERN
PRESS**

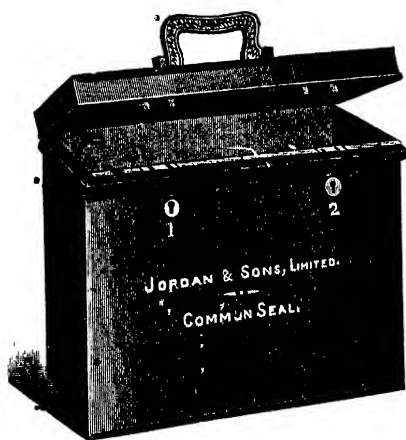
allowing
SIX INCHES
space from centre of die
to the
back of Press.

Seals Engraved and
Fitted to this Press

From **£4 7s. 6d.**

NOTE.—Prices subject
to market fluctuations.
Carriage extra.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.
AND 13 BROAD STREET PLACE, E.C. 2.



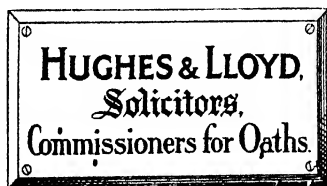
Japanned Cases for Seals.

THESE Cases are for the purpose of securing the Seals of Companies and Corporations from use by unauthorised persons, to keep the Seals free from dust, and to enable them to be easily carried from place to place. They are fitted with two good four-lever locks, with duplicate keys to each, and are stocked in various sizes. Cases of special dimensions can be supplied in a few days.

SIZES OF STOCK SEAL CASES		Length.		Width.		Depth.		s.	d.	
		No.								
	No. 1	...	8½ in.	x	3½ in.	x	4½ in.	...	26	6
	No. 2	...	10 in.	x	4 in.	x	5 in.	...	32	6
	No. 2A	...	10 in.	x	4 in.	x	8 in.	...	35	0
	No. 3	...	12 in.	x	4½ in.	x	6 in.	...	40	0
	No. 4	...	13 in.	x	5½ in.	x	7½ in.	...	45	0

All
Inside
Measure-
ments.

Brass or Bronze Name Plates.



Sketches and Estimates for Engraving Flat or Curved Name Plates will be submitted on receipt of particulars as to wording and size of Plate desired and any Special Fitting desired.

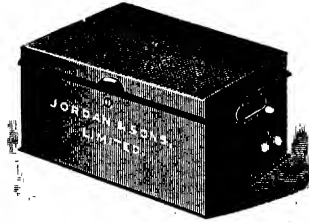
126 to 118, CHANCERY LANE, LONDON, W.C. 2.

AND 13, BROAD STREET PLACE, E.C. 2.

DEED BOXES.

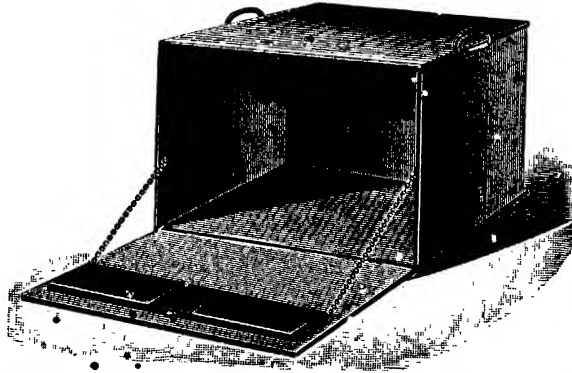
The constant fluctuations of the Metal Market render the publication of prices inadvisable, but quotations for any size and style of box will be made on request. It is only necessary to quote number, to indicate size, and to state whether Lift-up Lid or Fall Front is required.

LIFT-UP LIDS.



Length. Width. Depth.	Length. Width. Depth.	Length. Width. Depth.
No. 0, 12in. x 8in. x 6in.	No. 3, 16in. x 12in. x 10in.	No. 6, 23in. x 16in. x 14in.
No. 1, 13in. x 9in. x 8in.	No. 4, 18in. x 13in. x 11in.	No. 7, 26in. x 18in. x 16in.
No. 2, 14in. x 10in. x 9in.	No. 5, 20in. x 14in. x 12in.	No. 8, 28in. x 20in. x 17in.

FALL FRONTS.



Length. Depth. Height.	Length. Depth. Height.	Length. Depth. Height.
No. 3, 16in. x 12in. x 12in.	No. 5, 20in. x 14in. x 12in.	No. 7, 26in. x 18in. x 18in.
No. 4, 18in. x 14in. x 12in.	No. 5a, 20in. x 14in. x 14in.	No. 8, 28in. x 20in. x 20in.
	No. 6, 23in. x 16in. x 16in.	

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 2.

JORDAN & SONS, LIMITED,

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COMPLETE LIST OF COMPANY FORMS

Under The Companies Acts, 1908 to 1917.

Printed and Published by

JORDAN & SONS, LIMITED.

REQUIRED ON INCORPORATION.

- Memorandum of Association of Company Limited by Shares.
(Blank skeleton Form.) 2d. each.
• See also details of Draft Forms of Memorandum and Articles
on page ii.
- 9a. Particulars respecting Directors. 2d. each.
(Any subsequent change should be notified on Form 9.)
- 14. Notice of Consent to take Name of Existing Company. 2d. each.
- 25. Statement of Nominal Capital. 2d. each.
- 41. Declaration of Compliance with The Companies (Consolidation)
Act, 1908, in respect of matters precedent and incidental to
Registration. 2d. each.
- 42. Consent to Act as Director. (For Public Companies only) 2d. each.
- 42a. Contract by Director to Take and Pay for Qualification Shares.
(For Public Companies only.) 2d. each.
- 43. List of Persons who have Consented to act as Directors. (For
Public Companies only.) 2d. each.

REQUIRED BEFORE COMMENCING BUSINESS.

- 4. Notice of Situation of Registered Office. 2d. each.
(Any subsequent change should be notified on Form No. 5.)
- 44. Declaration of Compliance by Company issuing Prospectus. 2d. each.
- 44a. Declaration of Compliance by Company filing Statement in Lieu
of Prospectus. (Where Prospectus is not issued.) 2d. each.
- 55. Statement in Lieu of Prospectus. 3d. each.

Postage extra in all cases.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 2.

**REQUIRED ON APPLICATION AND ALLOTMENT AND
FOR CALLS ON SHARES.**

- | | | |
|------|---|------------|
| 45 | Return of Allotments—front sheets. | 2d. each. |
| 45a. | “ “ “ —continuation sheets. | 2d. each. |
| 52. | Particulars of Contract (when Shares allotted otherwise than for Cash and there is no Agreement in writing). | 3d. each. |
| 58. | Statement as to Commission in respect of Shares. | 2d. each. |
| 502. | Application for Shares with Receipt attached. | 1s. dozen. |
| 503. | Letter of Allotment of Shares, with Receipt attached. | 2d. each. |
| 504. | Letter of Allotment of Shares, with Receipt attached, and impressed with 1d. stamp (when the nominal value of the Shares allotted is under £5). | 2d. each. |
| 505. | Letter of Allotment of Shares, with Receipt attached, and impressed with 6d. stamp (when the nominal value of the Shares allotted is £5 or more). | 7d. each. |
| 506. | Notice of Call on Shares, with Receipt. | 1d. each. |
| 507. | Notice of Instalment due on Shares, with Receipt. | 1s. dozen. |
| 508. | Letter of Regret that no Allotment can be made, with Warrant attached returning Deposit. | 1d. each. |

REQUIRED IN CONNECTION WITH DEBENTURES.

- | | | |
|------|---|---------------|
| A. | Draft Form of Trust Deed for securing an issue of Debentures—FORM A. | 3s. 6d. each. |
| B. | Draft Form of Trust Deed for securing an issue of Debenture Stock—FORM B. | 3s. 6d. each. |
| 47. | Particulars for registration of Mortgage or Charge. | 2d. each. |
| 47a. | Particulars for registration of a series of Debentures. | 2d. each. |
| 48. | Particulars for registration of a further issue of Debentures in Registered Series. | 2d. each. |

Postage extra in all cases.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 2.

JORDAN & SONS, LIMITED,

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|--|-------------------------|
| 49. Memorandum of Satisfaction of Mortgage or Charge. | 2d. each |
| 511. Letter of Allotment of Debentures, impressed with Stamp with Receipt. | 6d. Stamp.
7d. each. |
| 512. Letter of Allotment of Debenture Stock, impressed with Stamp with Receipt. | 6d. Stamp.
7d. each. |
| 520. Debenture (Blank Form for Name of Company to be written in and forming part of a Series.) | 6d. each. |
| 520a. Debenture (Single, printed on hand-made Loan paper.) | 1s. each. |
| 521. Application for Debentures, with Receipt attached. | 1d. each. |
| 522. Application for Debenture Stock. | 1d. each. |
| 533. Transfer of Debentures. | 1d. each. |

ANNUAL RETURN OF CAPITAL AND MEMBERS.

- | | |
|--|-----------|
| 6al. Annual Return of Capital and Members (Form E) for <i>Public Company</i> ; front sheet and one continuation sheet. | 4d. each. |
| 6a. Annual Return of Capital and Members (Form E) for <i>Private Company</i> ; no continuation sheet. | 3d. each. |
| 6b. Certificate pursuant to Sub-Section 3 of Section 1 of The Companies Act, 1913. | 1d. each. |
| 8a. List of Members; continuation sheet for Form E. | 2d. each. |
- N.B.—Forms 6a and 8a are also supplied at the same price on thin paper to admit of a duplicate carbon copy being taken.

WINDING-UP FORMS.

- | | |
|---|-----------|
| 4w. Petition for Winding Up. | 3d. each. |
| 9w. Affidavit Verifying Petition. | 2d. each. |
| 9x. Ditto (by Limited Company). | 2d. each. |
| 15. Return of Final Winding-up Meeting. | 2d. each. |
| 39a. Notice of Appointment of Liquidator. | 2d. each. |
| 43w. Notice to Settle List of Contributories. | 2d. each. |
| 45w. Certificate of Final Settlement of List of Contributories. | 2d. each. |
| 45x. First Schedule to Certificate 45w. First Part. | 2d. each. |
| 45y. Ditto. Second Part. | 2d. each. |
| 45z. Second Schedule to Certificate 45w. | 2d. each. |

Postage extra in all cases.

116 to 118, CHANCERY LANE, LONDON, W.C. 2.
And 13 BRIGAD STREET PLACE, E.C. 2.

47w. Supplemental List of Contributories.	2d. each.
48w. Affidavit of Service of Notice on Contributories.	2d. each.
53w. Notice of Call to be sent to Contributories.	2d. each.
63. Proof of Debt, General Form.	3d. each.
80w. Form of General Proxy.	1d. each.
81w. Form of Special Proxy.	1d. each.
92. Liquidator's Statement of Receipts and Payments—front sheets.	2d. each.
92a. Ditto—continuation sheets.	2d. each.
93. Affidavit Verifying Liquidator's Statement of Account.	2d. each.
94. Liquidator's Trading Account—front sheets.	2d. each.
94a. Ditto—continuation sheets.	2d. each.
95. List of Dividends or Composition—front sheets.	2d. each.
95a. Ditto—continuation sheets.	2d. each.
96. List of Amounts Paid or Payable to Contributories—front sheets.	2d. each.
96a. Ditto—continuation sheets.	2d. each.
113. Extraordinary Resolution to Wind Up.	2d. each.
113a. Resolution of Creditors.	2d. each.
114. Notice to Creditors pursuant to Section 188 of The Companies (Consolidation) Act, 1908 (quarto).	1d. each.
115. Ditto. In form for <i>London Gazette</i> .	2d. each.
116. Notice to Creditors to send in Particulars of Debts or Claims.	2d. each.
117. Notice of Final Winding-up Meeting (to Shareholders) ² (quarto).	1d. each.
118. Notice of Final Winding-up Meeting (for <i>London Gazette</i>).	2d. each.

FORMS FOR USE OF COMPANIES INCORPORATED OUTSIDE THE UNITED KINGDOM

AND HAVING A PLACE OF BUSINESS IN THE UNITED KINGDOM

1f. List of Documents Presented for Filing.	2d. each.
2f. Return of List of Directors.	2d. each.

Postage extra in all cases.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 4.

JORDAN & SONS, LIMITED,

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| 3f. Return of Names and Addresses of Persons in the United Kingdom Authorised to Accept Service. | 2d. each. |
| 4f. Notice of Alteration in Instrument Constituting Company. | 2d. each. |
| 5f. Notice of Alteration in List of Directors. | 2d. each. |
| 6f. Notice of Alteration in Names or Addresses of Persons Authorised to Accept Service. | 2d. each. |
| * 7f. Statement of Affairs. | 2d. each. |

MISCELLANEOUS COMPANY FORMS.

- | | |
|---|-----------|
| 5. Notice of Change of Registered Office. | 2d. each. |
| 9. Copy of Register of Directors or Managers. (Filed when any change in particulars respecting any Director or Manager entered in Register.) | 2d. each. |
| 10. Notice of Increase of Capital. | 2d. each. |
| 11. Notice of Increase in Number of Members—Company Limited by Guarantee. | 2d. each. |
| 16. Special Resolution, draft form. | 2d. each. |
| 16a. Extraordinary Resolution, draft form. | 2d. each. |
| 26. Statement of Increase of Capital. | 2d. each. |
| 28. Notice of Consolidation, Division, or Conversion of Shares into Stock, or of the Reconversion of Stock into Shares. | 2d. each. |
| 46. Report Prior to Statutory Meeting. | 2d. each. |
| 53. Notice as to Appointment of Receiver or Manager. | 2d. each. |
| 57. Receiver's or Manager's Abstract of Receipts and Payments. | 2d. each. |
| 57b. Ditto. Continuation sheets. | 2d. each. |
| 57a. Notice on Ceasing to Act as Receiver or Manager. | 2d. each. |
| 500. Table A of The Companies (Consolidation) Act, 1908, foolscap size. (Also of the Acts of 1862 and 1906.) | 6d. each. |
| 501. Statement of Account showing Apportionment of Consideration under Agreement for Sale (for use when Agreements are submitted for Adjudication). | 3d. each. |
| 509. Certificate of Registration of Transfer of Shares in Books of Company. | 2d. each. |
| 513. Balance Receipt. | 1d. each. |
| 514. Transfer of Shares. | 1d. each. |

Postage extra in all cases.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BROAD STREET PLACE, E.C. 2.

515. Transfer Receipt.	1d. each.
516. Indemnity in respect of Lost or Destroyed Share Certificate.	3d. each
517a. Notice of Dividend, free of tax	2d. each.
517b. Ditto, less tax	1d. each.
518. Notice of Board Meeting (octavo).	1d. each.
519. Notice of Statutory General Meeting.	1d. each.
523. Model Balance Sheet in accordance with Table A.	2d. each.
530. Notice of Ordinary General Meeting.	1d. each.
531. Proxy Form, for adhesive stamp.	1d. each.
532. Proxy Form, impressed with 1d. stamp.	2d. each.
540. Notice of Extraordinary General Meeting.	1d. each.

BOUND COMPANY FORMS

504a. Letters of Allotment of Shares, with Receipts, perforated and numbered, impressed with 1d. Stamps, bound in books of 25, 6s. 6d.; 50, 13s.; 100, 25s.	
505a. Ditto. Impressed with 6d. stamps, bound in books of 25, 17s.; 50, 34s.; 100, 66s. 6d.	
506a. Notices of Calls on Shares, with Receipts, perforated and numbered, bound in books of 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.	
509a. Certificates of Registration of Transfers of Shares in Books of Company, perforated and numbered, bound in books of 25, 4s. 6d. 50, 9s.; 100, 16s. 6d.	
511a. Letters of Allotment of Debentures, with Receipts, perforated and numbered, impressed with 6d. stamps, bound in books of 25, 17s.; 50, 34s.; 100, 66s. 6d.	
512a. Letters of Allotment of Debenture Stock, perforated and numbered, impressed with 6d. stamps, bound in books of 25, 17s.; 50, 34s.; 100, 66s. 6d.	
513a. Balance Receipts (duplicate form), perforated and numbered, bound in books of 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.	
515. Transfer Receipts (duplicate form), perforated and numbered, bound in books of 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.	
517a. Notices of Dividend, free of tax, perforated and numbered, bound in books of 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.	
517b. Ditto. less tax, perforated and numbered, bound in books of 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.	
524a. Share Certificates (Blank Forms for Name of Company to be written in) printed from plate, perforated and numbered, 25, 4s. 6d.; 50, 9s.; 100, 16s. 6d.	
529a.	

Postage extra in all cases.

116 to 118 CHANCERY LANE, LONDON, W.C. 2.

AND 13 BRID STREET PLACE, E.C. 2.

GENERAL LEGAL FORMS.

BILLS OF SALE.

- BS 1. Bill of Sale, Absolute. 6d. each; 6s. dozen.
 BS 2. Affidavit to accompany Absolute Bill of Sale 1d. each; 1s. dozen.
 BS 3. Bill of Sale, Conditional. 6d. each; 6s. dozen.
 BS 4. Affidavit to accompany Conditional Bill of Sale. 1d. each; 1s. dozen.
 BS 5. Affidavit of Re-registration 2d. each; 2s. dozen.
 BS 6. Consent and Affidavit to enter Satisfaction. 2d. each; 2s. dozen.

DEEDS OF ARRANGEMENT AND ASSIGNMENT.

- Assignment for Benefit of Creditors—FORM A (General Form). 6d. each; 6s. dozen.
 Assignment for Benefit of Creditors—FORM B (General Form, not including Leascholds) 6d. each; 6s. dozen.
 DA 2. Assent of Creditor to Deed. 2d. each; 1s. 6d. dozen.
 DA 3. Statutory Declaration by Trustee as to Assents of Creditors. 2d. each; 1s. 6d. dozen.
 DA 3a. Notice of Meeting of Creditors to consider dispensing with Security by Trustee. 2d. each; 1s. 6d. dozen.
 DA 3b. Notice by Creditor that Security has been dispensed with. 2d. each; 1s. 6d. dozen.
 DA 4. Affidavit of Execution by Debtor. 2d. each; 1s. 6d. dozen.
 DA 4*. Affidavit of Execution by Debtors. 2d. each; 1s. 6d. dozen.
 DA 6. Debtor's Affidavit. 3d. each; 2s. 6d. dozen.
 DA 8. Statutory Declaration by Trustees that Creditors have Dispensed with his giving Security. 2d. each; 1s. 6d. dozen.
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